

Settlement Agreement – Urine Drug Testing

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”), the Defense Health Agency (“DHA”), which administers the TRICARE Program, through its General Counsel, and the United States Office of Personnel Management (“OPM”), which administers the Federal Employees Health Benefits Program (“FEHBP”) (collectively the “United States”), Relators identified in the cases listed in Paragraph B of the Recitals to this Agreement (“Relators”), and Millennium Health, LLC (formerly Millennium Laboratories, Inc.) (“Millennium”), through their authorized representatives. Collectively, all of the above will be referred to as the “Parties.”

RECITALS

A. Millennium, formerly a corporation incorporated under the laws of California, is a limited liability company organized under the laws of California with its principal place of business in San Diego, California. At all relevant times, Millennium marketed and performed laboratory testing services in the United States, including urine drug testing (“UDT”).

B. The Relators listed herein (hereinafter, “Relators”) have filed the following *qui tam* actions against Millennium (collectively, the “Civil Actions”):

1. United States, et al., ex rel. Estate of Robert Cunningham v. Millennium Laboratories of California, Inc., No. 09-cv-12209 (D. Mass.);

Settlement Agreement – Urine Drug Testing

2. United States, et al., ex rel. Mark McGuire v. Millennium Laboratories, Inc., No. 12-cv-10132 (D. Mass.);
3. United States, et al., ex rel. Ryan Uehling v. Millennium Laboratories, Inc., et al., No. 12-cv-10631 (D. Mass.);
4. United States, et al., ex rel. Omni Healthcare Inc., et al. v. Millennium Laboratories, Inc., No. 13-cv-10825 (D. Mass.);
5. United States, et al., ex rel. Wendy Johnson v. Millennium Laboratories, Inc., No. 12-cv-12387 (D. Mass.);
6. United States ex rel. Allstate Insurance Co. and Lawrence K. Spitz, M.D. v. Millennium Laboratories, Inc., No. 14-cv-14276 (D. Mass.); and
7. United States ex rel. Amadeo Pesce, Ph.D. v. Millennium Health, No. 15-cv-10821 (D. Mass.).

C. On March 19, 2015, the United States filed a Complaint In Intervention (“United States’ Complaint”) alleging that Millennium submitted false claims to the Medicare Part B program (“Medicare Program”) and the Florida Medicaid program for excessive and unnecessary UDT and for UDT referred in violation of 42 U.S.C. § 1395nn (commonly known as the “Stark Law”), and the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b).

D. Millennium has entered into or will be entering into separate settlement agreements, referenced in Paragraph 1.b below (hereinafter referred to as the “Medicaid State Settlement Agreements”) with certain states (the “Medicaid Participating States”) in settlement of the conduct described in the Medicaid State Settlement Agreements.

Settlement Agreement – Urine Drug Testing

E. The United States contends that Millennium submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll, the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”), the TRICARE Program, 10 U.S.C. §§ 1071-1110a, and the FEHBP, 5 U.S.C. §§ 8901-8914 (collectively, the “Federal Health Care Programs”).

F. The United States contends that it has certain civil claims against Millennium arising from the submission of claims to the Federal Health Care Programs from January 1, 2008, through May 20, 2015, for the following conduct, as alleged in paragraphs 85 – 266 of the United States’ Complaint: (1) excessive and unnecessary UDT ordered by physicians without an individualized assessment of patient need (as described in paragraphs 85 – 145 and 179 – 266 of the United States’ Complaint), and (2) UDT referred by physicians who received free point-of-care drug testing supplies in violation of the Stark Law, 42 U.S.C. § 1395nn, and the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (as described in paragraphs 146 – 178 of the United States’ Complaint). Collectively, the foregoing claims and conduct are referred to below as the “Covered Conduct.”

G. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relators’ reasonable expenses, attorneys’ fees and costs.

H. Millennium has advised the United States and Medicaid Participating States that, in order to obtain sufficient funds to pay the Settlement Amount (as defined in Paragraph 1 below), it intends to effect a restructuring transaction either through an out-of-court exchange of the obligations under its secured credit facility (the “Out-of-Court

Settlement Agreement – Urine Drug Testing

Restructuring”) or through a pre-packaged plan of reorganization under chapter 11 of the Bankruptcy Code (the “In-Court Restructuring,” and together with the Out-of-Court Restructuring, the “Millennium Restructuring”) on terms and conditions set forth in a restructuring support agreement (the “Restructuring Support Agreement”) to be executed by Millennium, Millennium Lab Holdings, Inc. (“MLH”), TA Millennium, Inc. (“TA”) and the holders of Millennium’s secured credit facility (the “Lenders”), the terms of which shall be consistent with the Milestones set forth in Exhibit A to this Agreement, which is incorporated herein. The Millennium Restructuring (in or out of court), shall not discharge the claims of Relators for statutory fees, expenses, costs, and damages under 31 U.S.C. §§ 3730(d), or (h), or other applicable common law or statutes. Millennium agrees that such claims are not dischargeable pursuant to 11 U.S.C. § 1141 in any plan of reorganization.

To avoid the delay, uncertainty, inconvenience and expense of protracted litigation, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Millennium shall pay or cause to be paid to the United States and the Medicaid Participating States, collectively, the sum of two hundred twenty-seven million dollars (\$227,000,000), plus interest at the rate of four percent (4.00%) per annum from May 20, 2015, and continuing until the day before full payment is made under this Agreement (collectively, the “Settlement Amount”). The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of this Agreement. This debt shall be

Settlement Agreement – Urine Drug Testing

discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

- a. Millennium agrees to pay a federal settlement amount to the United States in the sum of two hundred and two million, three hundred and thirty-five thousand, five hundred dollars (\$202,335,500.00) plus interest at the rate of four percent (4.00%) per annum from May 20, 2015, and continuing until the day before full payment is made (“Federal Settlement Amount”). All payments of the Federal Settlement Amount shall be paid by electronic funds transfer pursuant to written instructions by the United States.
- b. Millennium agrees to pay a Medicaid state settlement amount to the Medicaid Participating States in the sum of twenty-four million, six hundred sixty-four thousand, five hundred dollars (\$24,664,500.00), plus interest at the rate of four percent (4.00%) per annum from May 20, 2015 (the “Medicaid State Settlement Amount”), pursuant to the terms of the Medicaid State Settlement Agreements.
- c. The Settlement Amount shall be paid as follows:
 - i. Within one business day of the Effective Date of this Agreement, Millennium shall pay or cause to be paid the sum of thirty-nine million, four hundred eighty seven thousand, one hundred thirty-eight dollars and seventeen cents (\$39,487,138.17) to the United States (the “Initial Federal Settlement Amount”). Payment of the Initial Federal Settlement Amount shall be irrevocable, and the Initial Federal Settlement Amount shall not be returned to Millennium, regardless of

Settlement Agreement – Urine Drug Testing

default under, or termination of, this Agreement. In the event of default under, or termination of, this Agreement, the Initial Federal Settlement Amount will be credited to Millennium's liability to the United States for the Covered Conduct.

- ii. Within one business day of the effective date of a State Settlement Agreement, Millennium shall pay or cause to be paid the sum of four million, eight hundred thirteen thousand, four hundred forty-three dollars and sixty one cents (\$4,813,443.61) to the Medicaid Participating States (the "Initial Medicaid State Settlement Amount"). The Initial Medicaid State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Negotiating Team, which written instructions must be delivered to counsel for Millennium before the Initial Medicaid State Settlement Amount is due under this Agreement. Payment of the Initial Medicaid State Settlement Amount shall be irrevocable, and the Initial Medicaid State Settlement Amount shall not be returned to Millennium, regardless of default under, or termination of, this Agreement. In the event of default under, or termination of, this Agreement, the Initial Medicaid State Settlement Amount shall be credited toward Millennium's obligations to pay the Medicaid State Settlement Amount as set forth in the Medicaid State Settlement Agreements.

Settlement Agreement – Urine Drug Testing

iii. Millennium shall promptly, but in any event not later than November 9, 2015 cause irrevocable standby letter(s) of credit to be issued in favor of the United States (the “Settlement Letters of Credit”), in an amount totaling one hundred eighty-seven million, nine hundred thirty-three thousand, four hundred and ninety-seven dollars and two cents (\$187,933,497.03) (the “Settlement Letters of Credit Funds”), which equals the balance of the Settlement Amount assuming payment in full on December 30, 2015. Millennium agrees to pay for the costs, if any, of the Settlement Letters of Credit. The Settlement Letters of Credit shall be established pursuant to agreement among MLH, TA and the United States on terms and conditions acceptable to each of them, in their respective sole and absolute discretion, and which shall provide, among other things, that (i) on the first business day after the closing date of the Millennium Restructuring, as set forth in the Restructuring Support Agreement and the annexes thereto (the “Millennium Restructuring Effective Date”), the Settlement Letters of Credit Funds shall be released to the United States, HHS and the Medicaid Participating States; (ii) if the United States declares a default under this Agreement, terminates this Agreement, or takes action against Millennium based upon Millennium’s breach of this Agreement, the Settlement Letters of Credit shall terminate automatically by their terms and the Settlement Letters of Credit Funds shall be released automatically to MLH and TA based upon their

Settlement Agreement – Urine Drug Testing

respective contributions to the Settlement Letters of Credit Funds, and (iii) if the Millennium Restructuring Effective Date does not occur on or before December 30, 2015 for any reason, the Settlement Letters of Credit, at the sole discretion of MLH and TA, may terminate by their terms and the Settlement Letters of Credit Funds, at the sole discretion of MLH and TA, may be released to MLH and TA based upon their respective contributions to the Settlement Letters of Credit Funds.

None of Millennium or Millennium's creditors shall have any interest in the Settlement Letters of Credit Funds, and none of the United States nor any Medicaid Participating State shall have any interest in the Settlement Letters of Credit Funds until such time as the Millennium Restructuring Effective Date. For the avoidance of doubt, the Settlement Letters of Credit Funds shall not be property of Millennium's or its affiliates' bankruptcy estate arising under 11 U.S.C. § 541.

- iv. If full payment of the Settlement Amount is not made to the United States, HHS and the Medicaid Participating States from the Settlement Letters of Credit Funds on or before December 30, 2015, Millennium shall pay or cause to be paid the remaining balance of the Settlement Amount directly to the United States on December 30, 2015.

2. As soon as feasible following (1) any payments of the Settlement Amount, (2) dismissal of the case under Paragraph 20, and (3) written notice to the United States of final resolution of all disputes among Relators concerning Relators' rights to receive

Settlement Agreement – Urine Drug Testing

all or part of an award pursuant to 31 U.S.C. § 3730(d) (whether by agreement, final non-appealable judicial order, or binding alternative dispute resolution), the United States agrees to pay by electronic funds transfer fifteen percent (15%) of any payments of the Federal Settlement Amount to the recipient(s) designated and agreed upon by Relators, pursuant to written instructions provided by the Relators, or by a final non-appealable order by a court of competent jurisdiction.

3. Subject to the exceptions in Paragraph 8 (concerning excluded claims) and Paragraph 14 (concerning payment avoidance and recoveries) below, following the United States' receipt of full payment of the Federal Settlement Amount, the United States agrees and covenants not to pursue the United States' Complaint against Millennium with respect to the Covered Conduct. Subject to the exceptions in Paragraph 8, following the United States' receipt of full payment of the Federal Settlement Amount, and subject to Paragraph 14 below, the United States releases Millennium, together with its predecessors, current and former parents, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, officers, directors, shareholders, and employees, individually and collectively, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-12; the civil monetary provisions of 42 U.S.C. §§ 1395nn(g)(3) and (g)(4); the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308; and the common law theories of payment by mistake, unjust enrichment, and fraud.

Settlement Agreement – Urine Drug Testing

4. Conditioned upon the United States' receipt of full payment of the Federal Settlement Amount, and subject to Paragraph 14 below, and in consideration of the obligations of Millennium in this Agreement, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, and any other person or entity acting on their behalf or asserting their rights, release Millennium together with its predecessors, current and former, direct and indirect, parents, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, officers, directors, shareholders, and employees, individually and collectively, from any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33, and from all liability claims, demands, actions or causes of action, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal or state statute or regulation, or in common law (including, without limitation, payment by mistake, unjust enrichment, or fraud), that they, their heirs, successors, attorneys, agents and assigns otherwise would have standing to bring as of the date of this Agreement, including any liability to Relators arising from or relating to the claims Relators asserted or could have asserted in the Civil Actions, except that Relators do not release claims under 31 U.S.C. § 3730(h), and § 3730(d) for attorneys' fees, costs and expense, and analogous state false claims laws and state retaliation laws; provided, however, that the foregoing clause shall not apply to Allstate Insurance Company. Nothing in this Agreement shall impair, interfere with, reduce or preclude the right of Millennium or Amadeo Pesce or his heirs or assigns to seek and receive recovery or award of damages, attorney's fees and litigation expenses in connection with Case No. 37-2014-00029114-CU-BT-CTL in the Superior Court for the State of California, City

Settlement Agreement – Urine Drug Testing

and County of San Diego. Except as expressly provided herein, Relators covenant and agree that, from and after the Effective Date, they shall not bring any action or initiate any proceeding with respect to the foregoing released claims, and they shall not cause, induce, or assist any other person to assert or pursue any such claims on behalf of the United States. This release expressly covers all claims on behalf of the United States asserted by each Relator in the civil actions listed in Paragraph B in the Recitals section of this Agreement.

5. In consideration of the obligations of Millennium in this Agreement and the Corporate Integrity Agreement (“CIA”) entered into between OIG-HHS and Millennium, conditioned upon the United States’ and Medicaid Participating States’ receipt of full payment of the Settlement Amount, and subject to Paragraph 14 below, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Millennium under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 8 (concerning excluded claims) below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Millennium from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8 below.

Settlement Agreement – Urine Drug Testing

6. In consideration of the obligations of Millennium set forth in this Agreement, conditioned upon the United States' receipt of full payment of the Federal Settlement Amount, and subject to Paragraph 14 below, DHA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against Millennium under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 8 below, and as reserved in this Paragraph. DHA expressly reserves authority to exclude Millennium from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii), based upon the Covered Conduct. Nothing in this Paragraph precludes DHA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8 below.

7. In consideration of the obligations of Millennium in this Agreement, conditioned upon the United States' receipt of full payment of the Federal Settlement Amount, and subject to Paragraph 14 below, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative action under 5 U.S.C. § 8902a or 5 C.F.R. Part 890, Subpart J, for the Covered Conduct, except as reserved in Paragraph 8 below, and except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). Nothing in this Paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8 below.

8. Notwithstanding the releases given in Paragraphs 3 through 7 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

Settlement Agreement – Urine Drug Testing

- 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 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;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- i. Any liability of Millennium sales representative Marc Cullinan and his supervisors pertaining to the conduct alleged in Paragraphs 243 – 260 of the United States' Complaint.

9. Each Relator and his/her respective heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement and the amounts set forth in Paragraph 1 are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Each Relator and his/her respective heirs, successors, attorneys, agents, and assigns, and the United States

Settlement Agreement – Urine Drug Testing

agree that a total Relators' award of fifteen percent (15%) of the Federal Settlement Amount shall be proper pursuant to 31 U.S.C. § 3730; provided, however, that nothing in this Paragraph is intended to address whether or to what extent any particular Relator in these actions is entitled to a share of any of the proceeds identified in Paragraph 1 of this Agreement. Conditioned upon the United States' payment of the Relators' award pursuant to Paragraph 2, each Relator and his/her heirs, successors, attorneys, agents, and assigns 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 Actions or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Actions.

10. Millennium waives and shall not assert any defenses Millennium 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.

11. Millennium, on behalf of its predecessors, current and former parents, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, officers, directors, shareholders, and employees, individually and collectively, fully and finally releases the United States, its agencies, officers, agents, employees, and

Settlement Agreement – Urine Drug Testing

servants, from any claims (including for attorneys' fees, costs, and expenses of every kind and however denominated) that Millennium or its predecessors, current and former parents, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, officers, directors, shareholders, and employees, individually and collectively, has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. In consideration of the obligations of the Relators set forth in this Agreement, Millennium, on behalf of itself, its predecessors, and its current and former divisions, parents, subsidiaries, agents, successors, assigns, and their current and former directors, officers and employees, fully and finally releases the Relators and their attorneys, agents, officers, assigns, employees, and servants, from any claims (including for attorneys' fees, costs, and expenses of every kind and however denominated) that Millennium has asserted, could have asserted, or may assert in the future against the Relators and their attorneys, agents, officers, assigns, employees, and servants, related to the Covered Conduct, and the conduct alleged in Relators' *qui tam* actions identified in Paragraph B of the Recitals to this Agreement. Provided, however, that Millennium expressly reserves any defenses or claims as to Relators' and Relators' counsel's claims for reasonable attorneys' fees, expenses and costs pursuant to 31 U.S.C. § 3730(d) and as to any claims Relators may have pursuant to 31 U.S.C. § 3730(h), which are reserved pursuant to Paragraph 4 above.

13. The Settlement Amount shall not be decreased as a result of any overpayment determination by, or as a result of the denial of claims for payment now

Settlement Agreement – Urine Drug Testing

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 Millennium agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

14. Millennium agrees to the following in exchange for valuable consideration provided in this Agreement.

- a. Millennium's obligations under this Agreement, financial or otherwise, may not be avoided pursuant to 11 U.S.C. § 547, and Millennium shall not argue or otherwise take the position in any case, proceeding, or action that: (i) Millennium's obligations under this Agreement may be avoided under 11 U.S.C. § 547; or (ii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Millennium. Millennium further agrees that the mutual promises, covenants and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Millennium was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).
- b. (1) If Millennium defaults on any of its obligations under this Agreement prior to irrevocable payment in full of the Settlement Amount; or (2) if any portion of the Initial Federal Settlement Amount or the Initial Medicaid State Settlement Amount is avoided or recovered for any reason, including, but not limited to, through the exercise of powers granted under 11 U.S.C. §§ 544, 547,

Settlement Agreement – Urine Drug Testing

548 or 550, or any other Bankruptcy Code Provision or state law provision, by entry of judgment or settlement (defined herein as an “Avoidance Event”):

i. The United States, in its sole discretion, may rescind the covenants and releases in this Agreement and discontinue its forbearance from bringing any civil and/or administrative claim, action, or proceeding against Millennium for the claims that would otherwise be covered by the covenants and releases provided in Paragraphs 3 through 7. Millennium agrees that: (A) any such claims, actions, or proceedings brought by the United States are not subject to an automatic stay pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in this Paragraph due to the United States’ police and regulatory powers to protect public policy and public health, safety and welfare, and Millennium shall not argue or otherwise contend that the United States’ claims, actions, or proceedings are subject to an automatic stay and consents to the lifting of the automatic stay for cause pursuant to 11 U.S.C. § 362(d); (B) neither Millennium nor its predecessors, current and former parents, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, shall plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the United States or Relators within 120 calendar days of written notification to Millennium that the releases have been rescinded pursuant to this Paragraph, except to

Settlement Agreement – Urine Drug Testing

the extent such defenses were available on March 19, 2015; and (C) the United States has an allowed, valid, liquidated claim against Millennium in the amount of \$500,000,000.00 secured by valid and perfected offset and recoupment rights, and the United States may pursue its claim in the case, action, or proceeding referenced in this Paragraph, as well as in any other case, action, or proceeding.

ii. OIG-HHS may exclude Millennium from participating in all Federal health care programs until Millennium cures the default and/or pays the unpaid portion of the Settlement Amount, interest due, and collection costs. OIG-HHS will provide written notice of any such exclusion to Millennium. Millennium 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 Millennium wishes to apply for reinstatement, Millennium must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005.

Millennium will not be reinstated unless and until the OIG approves such request for reinstatement. The option for exclusion for default as described in this Paragraph is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

iii. The United States and the Medicaid Participating States shall be made whole for any avoided or recovered portion of the Initial Federal

Settlement Agreement – Urine Drug Testing

Settlement Amount or Initial Medicaid State Settlement Amount by means of enforcement of the Guarantee Agreement set forth in Exhibit B attached hereto. If payment made under the Guarantee Agreement is recovered from the United States or the Medicaid Participating States for any reason, including, but not limited to, through the exercise of powers granted under 11 U.S.C. §§ 544, 547, 548 or 550, or any other Bankruptcy Code Provision or state law provision, the United States, in its sole discretion, may rescind the covenants and releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding for the claims that would otherwise be covered by the covenants and releases provided in Paragraphs 3 through 7. Millennium agrees that (i) any rescission of covenants, releases and/or any claims, actions, or proceedings brought by the United States is not subject to an automatic stay pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in this Paragraph due to the United States' police and regulatory powers to protect public policy and public health, safety, and welfare, and Millennium shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay and consents to the lifting of the automatic stay for cause pursuant to 11 U.S.C. § 362(d); (ii) neither Millennium nor any of its predecessors, current and former parents, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, officers, directors, or employees, shall plead, argue, or otherwise raise any defenses under the

Settlement Agreement – Urine Drug Testing

theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 120 calendar days of written notification to Millennium that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 19, 2015; and (iii) the United States has an allowed, valid, liquidated claim against Millennium in the amount of \$500,000,000.00, secured by valid and perfected offset and recoupment rights, and the United States may pursue its claim in any case, action, or proceeding referenced in this Paragraph, as well as in any other case, action, or proceeding.

iv. The United States may, in its sole discretion, declare that Millennium's failure to comply with any of its obligations in the Milestones set forth in Exhibit A hereto, is a default of Millennium's obligations under this Agreement for purposes of this Paragraph 14.

15. Millennium 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Millennium, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

Settlement Agreement – Urine Drug Testing

- (2) the United States’ audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) Millennium’s investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys’ fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Millennium makes to the United States pursuant to this Agreement and any payments that Millennium may make to any Relator, including costs and attorneys’ fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to:
 - (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and
 - (ii) prepare and submit reports to the OIG-HHS
are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and FEHBP (hereinafter referred to as Unallowable Costs). However, nothing in Paragraph 15.a(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Millennium.

Settlement Agreement – Urine Drug Testing

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Millennium, and Millennium 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 Millennium or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHB Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Millennium further agrees that within ninety (90) days of the Effective Date of this Agreement it 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 from 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 Millennium or any of its subsidiaries or affiliates, 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. Millennium agrees that the United States, at a minimum, shall be entitled to recoup from Millennium 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.

Settlement Agreement – Urine Drug Testing

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 Millennium or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Millennium or any of its subsidiaries or affiliates' 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 Millennium's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

16. Millennium agrees to cooperate fully and truthfully with the United States' investigations of individuals and entities not released in this Agreement. Upon reasonable notice, Millennium shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Millennium further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

Settlement Agreement – Urine Drug Testing

17. 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 18 (waiver for beneficiaries paragraph), below.

18. Millennium agrees that it waives and shall not seek payment for any of the health care billings released by this Agreement from any health care beneficiaries of a federally funded plan or benefit, or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

19. The Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth in this Agreement constitute a contemporaneous exchange for new value given to Millennium, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange for new value. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Millennium was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

20. Promptly following ninety-one (91) days after the United States' receipt of the full Federal Settlement Amount and conditioned upon the non-occurrence of (1) an Avoidance Event; and (2) initiation of a cause of action to avoid or recover any portion of the Settlement Amount or the Guarantee Agreement or any payment thereunder, the Parties (as appropriate) shall seek dismissal of the United States' Complaint and the Relators' complaints in each of the Civil Actions identified in Paragraph B of the Recitals

Settlement Agreement – Urine Drug Testing

to this Agreement. The dismissal of the United States' Complaint shall be with prejudice as to the Covered Conduct; the dismissal of the Relators' complaints shall be with prejudice to the United States and the Relators as to the Covered Conduct, and with prejudice to the Relators and without prejudice to the United States as to all other claims except as provided herein; provided, however, that the United States District Court for the District of Massachusetts shall retain jurisdiction as to (a) Relators' claims for a share of the proceeds of the Settlement Amount pursuant to Paragraph 2; (b) Relators' claims against Millennium for reasonable attorneys' fees, expenses, and costs pursuant to 31 U.S.C. § 3730(d) or any analogous provisions in state false claims statutes or state retaliation laws; (c) Relators' claims against Millennium under 31 U.S.C. § 3730(h) or any analogous provisions in state false claims statutes or state retaliation laws; and (d) Relators' claims against the States for Relators' shares. The United States agrees that if, in connection with an In-Court Restructuring, all payments comprising the Settlement Amount are authorized and ratified by a final, non-appealable bankruptcy court order in form and substance acceptable to the United States, in its sole discretion, the United States and the Relators shall seek the dismissals contemplated by this Paragraph promptly following the Millennium Restructuring Effective Date.

21. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except Relators reserve their rights against Millennium to seek attorneys' fees, costs and expenses under 31 U.S.C. §§ 3730(d), and (h) or any analogous provisions in state false claims statutes or state retaliation laws.

Settlement Agreement – Urine Drug Testing

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

23. 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 District of Massachusetts, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA.

24. 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.

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

26. The individuals signing this Agreement on behalf of Millennium represent and warrant that they are authorized by Millennium to execute this Agreement. The individuals signing this agreement on behalf of each Relator represent and warrant that they are fully authorized by that Relator to execute this Agreement. The United States' signatories represent that they are signing this Agreement in their official capacities and they are authorized to execute this Agreement.

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

28. This Agreement is binding on Millennium's successors, transferees, heirs, and assigns.

29. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

Settlement Agreement – Urine Drug Testing

30. All parties consent to the disclosure of this Agreement, and information about this Agreement to the public after the Effective Date.

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

Settlement Agreement – Urine Drug Testing

THE UNITED STATES OF AMERICA

By: 
ABRAHAM R. GEORGE
GEORGE B. HENDERSON, II
Assistant United States Attorneys
District of Massachusetts

Dated: 10/16/2015

By: 
DOUGLAS J. ROSENTHAL
AUGUSTINE M. RIPA
Trial Attorneys
Commercial Litigation Branch
United States Department of Justice

Dated: 10/16/15

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

Dated: _____

BY: _____
BRYAN T. WHEELER
Acting General Counsel
Defense Health Agency
United States Department of Defense

Dated: _____

BY: _____
ALAN P. SPIELMAN
Assistant Director of Federal
Employee Insurance Operations
United States Office of
Personnel Management

Dated: _____

Settlement Agreement – Urine Drug Testing

THE UNITED STATES OF AMERICA

By: _____
ABRAHAM R. GEORGE
GEORGE B. HENDERSON, II
Assistant United States Attorneys
District of Massachusetts

Dated: _____

By: _____
DOUGLAS J. ROSENTHAL
AUGUSTINE M. RIPA
Trial Attorneys
Commercial Litigation Branch
United States Department of Justice

Dated: _____

BY: Robert K. DeConti
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

Dated: 10/16/15

BY: _____
BRYAN T. WHEELER
Acting General Counsel
Defense Health Agency
United States Department of Defense

Dated: _____

BY: _____
ALAN P. SPIELMAN
Assistant Director of Federal
Employee Insurance Operations
United States Office of
Personnel Management

Dated: _____

Settlement Agreement – Urine Drug Testing

THE UNITED STATES OF AMERICA

By: _____ Dated: _____
ABRAHAM R. GEORGE
GEORGE B. HENDERSON, II
Assistant United States Attorneys
District of Massachusetts

By: _____ Dated: _____
DOUGLAS J. ROSENTHAL
AUGUSTINE M. RIPA
Trial Attorneys
Commercial Litigation Branch
United States Department of Justice

BY: _____ Dated: _____
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

BY:  _____ Dated: 10/16/15
BRYAN T. WHEELER
Acting General Counsel
Defense Health Agency
United States Department of Defense

BY: _____ Dated: _____
ALAN P. SPIELMAN
Assistant Director of Federal
Employee Insurance Operations
United States Office of
Personnel Management

Settlement Agreement – Urine Drug Testing

THE UNITED STATES OF AMERICA

By: _____ Dated: _____
ABRAHAM R. GEORGE
GEORGE B. HENDERSON, II
Assistant United States Attorneys
District of Massachusetts

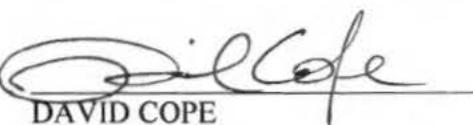
By: _____ Dated: _____
DOUGLAS J. ROSENTHAL
AUGUSTINE M. RIPA
Trial Attorneys
Commercial Litigation Branch
United States Department of Justice

BY: _____ Dated: _____
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

BY: _____ Dated: _____
BRYAN T. WHEELER
Acting General Counsel
Defense Health Agency
United States Department of Defense

BY: Alan P. Spielman Dated: 10/15/15
ALAN P. SPIELMAN
Assistant Director of Federal
Employee Insurance Operations
United States Office of
Personnel Management

Settlement Agreement – Urine Drug Testing

BY: 

DAVID COPE
Debarring Official
Office of the Assistant Inspector
General for Legal Affairs
United States Office of
Personnel Management

Dated: 10/15/2015

Settlement Agreement – Urine Drug Testing

MILLENNIUM HEALTH, LLC

BY:  _____ Dated: 10-15-15
BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

BY: _____ Dated: _____
MICHAEL K. LOUCKS
Counsel for Millennium Health, LLC

BY: _____ Dated: _____
JOSEPH F. SAVAGE
Counsel for Millennium Health, LLC

Settlement Agreement – Urine Drug Testing

MILLENNIUM HEALTH, LLC

BY: _____
BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

Dated: _____

BY: Michael K. Loucks ACB
MICHAEL K. LOUCKS
Counsel for Millennium Health, LLC

Dated: 10-15-15

BY: 
JOSEPH F. SAVAGE
Counsel for Millennium Health, LLC

Dated: 10/15/15

RELATOR the Estate of Robert Cunningham

BY: Kristen Cunningham
Kristen Cunningham, Representative of
or successor to the Estate of Robert Cunningham

Dated: October 16, 2015

BY: _____
Kendra Cunningham, Representative of
or successor to the Estate of Robert Cunningham

Dated: _____

BY: Kristen Cunningham
Kristen Cunningham, Administratrix of
the Estate of Robert Harold Cunningham

Dated: October 16, 2015

BY: Robert A. Griffin
Robert A. Griffin
BBO 211900
Gargiulo/Rudnick, LLP
115 Broad Street, 4th Floor
Boston, MA 02110
(617) 742-3833

Dated: October 16, 2015

BY: John Roddy
John Roddy
BBO 424240
Bailey & Glasser LLP
99 High Street, Suite 304
Boston, MA 02110
(617) 439-6730

Dated: October 16, 2015

Attorneys for the Estate of Robert Cunningham

RELATOR MARK MAGUIRE

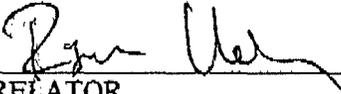
BY: Mark Maguire
RELATOR MARK McGUIRE

Dated: 10/13/15

BY: Thomas M. Greene
[COUNSEL FOR RELATOR]
THOMAS M. GREENE
GREENE LLP
One Liberty Square, Suite 1200
Boston, MA, 02109
COUNSEL FOR RELATOR MARK McGUIRE

Dated: 10/14/15

RELATOR [XXX]

BY: 
RELATOR
Ryan W. Jones

Dated: 10-15-15

BY: 
[COUNSEL FOR RELATOR]
Counsel for [Relator]
Barry S. Anderson

Dated: 10-15-15

RELATOR [XXX]

BY: _____
RELATOR
Ryan Verling

Dated: _____

BY: _____
[COUNSEL FOR RELATOR]
Counsel for [Relator]
Barry S. Anderson

Dated: 10-15-15

Patricia A. Kelly
Esdaile, Barrett, Jacobs & Mone 10/15/15

RELATOR WENDY JOHNSON

BY: Wendy Johnson Dated: 10/15/15
WENDY JOHNSON

BY: Elaine Stromgren Dated: 10/15/15
ELAINE STROMGREN
Florida Bar No.: 0417610
JESSE L. HOYER
Florida Bar No.: 076934
JAMES, HOYER, NEWCOMER & SMILJANICH, P.A.
4830 West Kennedy Boulevard
Suite 550
Tampa, Florida 33609
(813) 397-2300

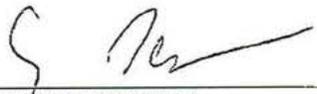
BY: Suzanne E. Durrell Dated: 10/15/15
SUZANNE E. DURRELL
Mass. BBO #139280
DURRELL LAW OFFICE
180 Williams Avenue
Milton, Massachusetts 02186
(617) 333-9681

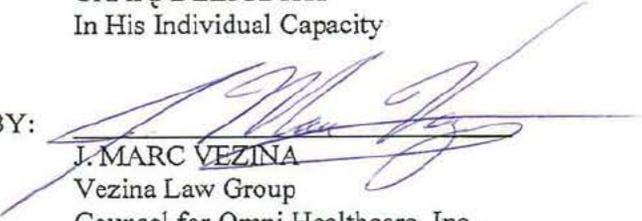
Counsel for Relator Wendy Johnson

Settlement Agreement – Urine Drug Testing

RELATORS OMNI HEALTHCARE, INC. AND CRAIG DELIGDISH

DATED: 10/15/2015 BY: 
CRAIG DELIGDISH
President
On Behalf of Omni Healthcare, Inc.

DATED: 10/15/2015 BY: 
CRAIG DELIGDISH
In His Individual Capacity

DATED: 10/15/15 BY: 
J. MARC VEZINA
Vezina Law Group
Counsel for Omni Healthcare, Inc.,
and Craig Deligdish

DATED: 10/15/15 BY: 
MONICA P. NAVARRO
Vezina Law Group
Counsel for Omni Healthcare, Inc.,
and Craig Deligdish

RELATOR ALLSTATE INSURANCE COMPANY:

BY: Catia Monforton-Farris
Catia Monforton-Farris, on behalf of
Allstate Insurance Company

Dated: 10/15/2015

BY: Jacquelyn McEttrick
Richard D. King, Jr. (BBO No. 638142)
Nathan A. Tilden (BBO No. 647076)
Jacquelyn A. McEttrick (BBO No. 669827)
SMITH & BRINK, P.C.
350 Granite Street, Suite 2303
Braintree, MA 02184
(617) 770-2214

Dated: 10/15/15

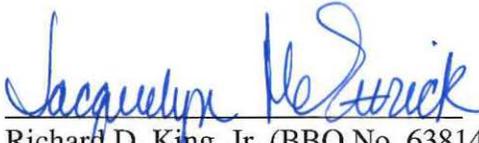
Counsel for Allstate Insurance Company

RELATOR LAWRENCE K. SPITZ, M.D.:



BY: _____
Lawrence K. Spitz, M.D.

Dated: 10/14/15

BY: 
Richard D. King, Jr. (BBO No. 638142)
Nathan A. Tilden (BBO No. 647076)
Jacquelyn A. McEttrick (BBO No. 669827)
SMITH & BRINK, P.C.
350 Granite Street, Suite 2303
Braintree, MA 02184
(617) 770-2214

Dated: 10/15/15

Counsel for Lawrence K. Spitz, M.D.

Settlement Agreement – Urine Drug Testing

RELATOR ~~XXXX~~ Amadeo Pesce, Ph.D.

BY: Amadeo Pesce Dated: 10/16/15
RELATOR

BY: [Signature] Dated: 10/14/15
[COUNSEL FOR RELATOR]
Counsel for [Relator]

EXHIBIT A: MILESTONES

1. Millennium must obtain the written, irrevocable support for the Millennium Restructuring, as evidenced in a Restructuring Support Agreement, of Lenders representing not less than a majority in number and not less than 66.67% of the principal amount of the total holders and obligations outstanding, respectively, under its secured credit facility, on or before October 16, 2015;
2. Millennium must obtain the written, irrevocable support for the Millennium Restructuring, of shareholders representing not less than a majority of Millennium's equity, on or before October 16, 2015;
3. If the Millennium Restructuring involves an In-Court Restructuring, Millennium shall provide the United States with a copy of its bankruptcy plan by October 19, 2015, and obtain approval of the bankruptcy plan from the United States. The United States shall not withhold its approval of the bankruptcy plan without a good faith basis, and must inform Millennium of the reasons for withholding approval; Millennium shall have seven (7) days to revise the plan and seek approval of the revised bankruptcy plan from the United States;
4. If the Millennium Restructuring involves an In-Court Restructuring, Millennium shall deliver ballots and solicitations and obtain plan acceptance in a manner complying with 11 U.S.C. §§ 1125 and 1126 from all creditors entitled to vote on the plan on or before November 8, 2015;
5. Millennium shall have caused its shareholders to provide the United States with an irrevocable letter of credit, in each case on terms and conditions acceptable to the shareholders and the United States, in each one's respective sole and absolute

discretion, in an amount equal to \$187,933,497.03 on or before November 9, 2015; provided, however, that in all events, Millennium shall present the irrevocable letter of credit at least one day prior to the date on which Millennium files the petition described in paragraph 6;

6. If the Millennium Restructuring involves an In-Court Restructuring, Millennium shall file its petition for relief under chapter 11 of title 11 of the United States Code by November 10, 2015; and

7. If the Millennium Restructuring involves an In-Court Restructuring, the bankruptcy plan, as described in paragraph 3, must be confirmed by the Bankruptcy Court by order entered on or before December 21, 2015.

BY:  Dated: 10.15.15
BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

BY: _____ Dated: _____
MICHAEL K. LOUCKS
Counsel for Millennium Health, LLC

BY: _____ Dated: _____
JOSEPH F. SAVAGE
Counsel for Millennium Health, LLC

discretion, in an amount equal to \$187,933,497.03 on or before November 9, 2015; provided, however, that in all events, Millennium shall present the irrevocable letter of credit at least one day prior to the date on which Millennium files the petition described in paragraph 6;

6. If the Millennium Restructuring involves an In-Court Restructuring, Millennium shall file its petition for relief under chapter 11 of title 11 of the United States Code by November 10, 2015; and

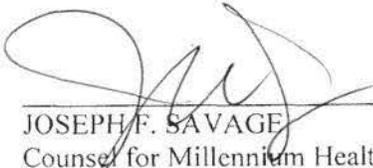
7. If the Millennium Restructuring involves an In-Court Restructuring, the bankruptcy plan, as described in paragraph 3, must be confirmed by the Bankruptcy Court by order entered on or before December 21, 2015.

BY: _____
BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

Dated: _____

BY: Michael K. Loucks/ACB
MICHAEL K. LOUCKS
Counsel for Millennium Health, LLC

Dated: 10-15-15

BY: 
JOSEPH F. SAVAGE
Counsel for Millennium Health, LLC

Dated: 10/15/15

EXHIBIT B: GUARANTEE AGREEMENT

This Guarantee Agreement is entered by and among Millennium Lab Holdings, Inc. (“MLH”), TA XI, L.P. (“TA”), the United States of America (“United States”), acting through the United States Department of Justice, Millennium Health, LLC (“Millennium”), a California limited liability company, formerly known as Millennium Laboratories, Inc., a former California corporation, and James Slattery on behalf of the Slattery Family Trust (“Slattery”).

BACKGROUND

A. At the time of execution of this Guarantee Agreement, one hundred percent (100%) of the stock of Millennium is owned by Millennium Lab Holdings II, LLC (“MLH II, LLC”). Approximately fifty-five percent (55%) of the stock of MLH II, LLC is owned by MLH, and approximately forty-five percent (45%) of the stock is owned by TA Millennium, Inc. The stock of MLH is owned by fourteen trusts which own various amounts of the stock of MLH. Seven of these trusts were established by James Slattery for the benefit of himself and/or members of his family, and these Slattery trusts own approximately 79.896 percent of the stock of MLH. One of these trusts, known as the Slattery Family Trust, owns 24.46 percent of the stock of MLH. James Slattery, co-trustee of the Slattery Family Trust, is the founder of Millennium and is currently the Director of the Board of Millennium.

B. Millennium is this day entering into a Settlement Agreement – Urine Drug Testing (“UDT Settlement Agreement”) with the United States and certain relators in connection with seven *qui tam* actions against Millennium and the United States’ Complaint In Intervention filed March 19, 2015. This Guarantee Agreement is Exhibit B to the UDT Settlement Agreement.

C. Millennium is also this day entering into a Settlement Agreement – Pharmacogenetic Testing (“PGT Settlement Agreement”) with the United States and certain relators in connection with a *qui tam* action against Millennium, *United States, et al., ex rel. Omni Healthcare Inc., et al. v. Millennium Laboratories, Inc.*, No. 14-cv-13052-RGS (D. Mass.). This Guarantee Agreement is Exhibit A to the PGT Settlement Agreement.

D. Millennium is also this day entering into an Administrative Settlement Agreement with the Department of Health and Human Services (“HHS”), acting through the Centers for Medicare and Medicaid Services, in connection with administrative overpayment and denial actions. This Guarantee Agreement is Exhibit A to the Administrative Settlement Agreement.

E. Millennium is this day or will hereafter be entering into Urine Drug Testing Settlement Agreements and Pharmacogenetic Testing Settlement Agreements (each of these agreements will be hereinafter referred to as a “Medicaid State Settlement Agreement”) with certain States (the “Medicaid Participating States”).

F. Collectively, the agreements referenced in Paragraphs B, C, D and E will be referred to as the “Settlement Agreements.” Under the terms of the Settlement Agreements, within one business day of the effective date of the Settlement Agreements, Millennium shall pay or cause to be paid an Initial Federal Settlement Amount, an Initial Medicaid State Settlement Amount, and an Initial Administrative Settlement Amount (as such terms are defined in the Settlement Agreements), aggregating to a total of fifty million dollars (\$50,000,000) (collectively, the “Initial Settlement Amount”).

G. In consideration of the covenants and releases provided in the Settlement Agreements, MLH, TA and Slattery shall guarantee through the Termination Date (as defined below), as set forth and subject to the limitations herein, to the United States, HHS, and the

Medicaid Participating States the Initial Settlement Amount should any such payments or a portion thereof be avoided or recovered through judgment, settlement or otherwise.

H. The United States, HHS, and Medicaid Participating States are the beneficiaries of this Guarantee Agreement.

I. TA and Slattery have provided, on a confidential basis, to the United States documentation of the availability of funds sufficient to satisfy the payment guarantee set forth herein.

THEREFORE, for fair and valuable consideration, receipt of which is hereby acknowledged, it is agreed:

TERMS AND CONDITIONS

1. Guarantee.

a. Effective immediately upon execution of this Guarantee Agreement, and prior to the Termination Date, in the event all or any part of the Initial Settlement Amount under any of the Settlement Agreements is avoided or recovered from the United States, Medicaid Participating States, or HHS, for any reason, including, but not limited to, through the exercise of powers granted under 11 U.S.C. §§ 544, 547, 548 or 550, or any other Bankruptcy Code provision or state law provision, by entry of judgment or settlement (defined herein as an “Avoidance Event”), MLH and TA and Slattery each guarantee to the United States, HHS, and the Medicaid Participating States payment of the amount(s) avoided or recovered such that the United States, HHS and/or the Medicaid Participating States are made whole with respect to the amount(s) avoided or recovered by entry of judgment or settlement (the “Guaranteed Payment”) as set forth and subject to the limitations herein. The Guaranteed Payment shall be made within ten (10) days of entry of a final order requiring, effectuating or approving an Avoidance Event

and payment of the amount subject to the Avoidance Event by the United States, HHS, and/or the Medicaid Participating States, as the case may be. MLH, TA and Slattery agree to pay the Guaranteed Payment as follows:

i. MLH will, and hereby does, unconditionally agree to pay the United States, HHS, and the Medicaid Participating States the due and punctual payment of fifty-five percent (55%) of up to \$50.0 million of the Guaranteed Payment that is subject to an Avoidance Event, pursuant to a final order in a Debt Relief Action (as defined below) and required to be disgorged and disgorged.

ii. Slattery will, and hereby does, unconditionally agree to pay the United States, HHS, and the Medicaid Participating States the due and punctual payment of fifty-five percent (55%) of up to \$50.0 million of the Guaranteed Payment that is subject to an Avoidance Event, pursuant to a final order in a Debt Relief Action (as defined below) and required to be disgorged and disgorged; *provided, however*, that such guarantee owed by Slattery will only be triggered if, upon request by the United States and the Medicaid Participating States, MLH fails to remit a timely Guaranteed Payment. For the avoidance of doubt, under no circumstances shall Slattery and MLH be responsible for (or be required to pay), collectively, more than fifty-five percent (55%) of up to \$50.0 million of the Guaranteed Payment.

iii. TA will, and hereby does, unconditionally agree to pay the United States, HHS, and the Medicaid Participating States the due and punctual payment of forty-five percent (45%) of up to \$50.0 million of the Guaranteed Payment that is subject to an Avoidance Event, pursuant to a final order in a Debt Relief Action (as defined below) and required to be disgorged and disgorged.

b. The guarantees provided for herein shall be several and joint as to MLH and Slattery (together, the “MLH Guarantors”), and several (and not joint) as to TA (the “TA Guarantor,” and the TA Guarantor and the MLH Guarantors, each being a “Guarantor”), and the United States, HHS, and the Medicaid Participating States may enforce each entity’s rights as against each Guarantor with respect to the Guaranteed Payment as set forth herein according to the percentages set forth in Paragraph 1.a. In the event that MLH, TA and/or Slattery is required to perform on their respective obligations hereunder as Guarantors, MLH, TA and/or Slattery shall each receive a dollar-for-dollar credit or offset with respect to any payment made by them if the United States, HHS, or the Medicaid Participating States obtain a judgment or recovery against any of MLH, TA and /or Slattery.

2. This Guarantee Agreement shall terminate upon the latest to occur of (the “Termination Date”):

a. the expiration of ninety-one (91) days after full payment of the Initial Settlement Amount in accordance with the Settlement Agreements if, within such ninety-one (91) day period no case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors has been filed seeking any order for relief of Millennium’s debts, or seeking to adjudicate Millennium as bankrupt or insolvent or seeking appointment of a receiver, trustee, custodian, or other similar official for Millennium or for all or any substantial part of Millennium’s assets (hereinafter “Debt Relief Action”) has been filed;

b. fifteen (15) days after the termination of all proceedings, including any appeals, of any Debt Relief Action that has been commenced within ninety-

one (91) days after full payment of the Initial Settlement Amount in accordance with the Settlement Agreements, provided that no Avoidance Event has occurred, and no action or proceeding seeking to effectuate an Avoidance Event is pending;

c. fifteen (15) days after the termination of all proceedings, including any appeals, of any action in any Debt Relief Action seeking to effectuate an Avoidance Event that has been commenced within the applicable statute of limitations for such action, provided that the obligations set forth in this Guarantee Agreement have been satisfied; or

d. the day after expiration of the statute of limitations for the commencement of any action in any Debt Relief Action seeking to effectuate an Avoidance Event, provided that no action seeking to effectuate an Avoidance Event is pending.

Notwithstanding the foregoing, if an order entered in any Debt Relief Action approves payment of the Initial Settlement Amount, provides that such payment is not subject to an Avoidance Event, and prohibits and enjoins the commencement of any action or proceeding seeking to effectuate an Avoidance Event, the Guarantee Agreement shall terminate on the fifteenth (15th) day after such order becomes final and not subject to appeal.

3. Additional Terms.

a. TA Representations. TA has the authority to enter into this agreement and to perform in accordance with its terms. TA has on hand, or has access to, sufficient funds to satisfy the payment guarantee set forth herein. TA has provided to the United States documentation demonstrating the availability of such funds and hereby represents and warrants that the documentation is accurate

and that sufficient funds to satisfy the payment guarantee set forth herein will remain available through the Termination Date.

b. MLH Representations. MLH has the authority to enter into this agreement and to perform in accordance with its terms. MLH has put into action requests to obtain sufficient funds to satisfy the payment guarantee set forth herein. Upon thirty days of entry into this Guarantee Agreement, MLH will provide, on a confidential basis, to the United States documentation of the availability of such funds.

c. James Slattery Representations. James Slattery has the authority, and will continue to have the authority, to enter into this agreement on behalf of the Slattery Family Trust and to bind the Slattery Family Trust to perform in accordance with the terms of this Guarantee Agreement. The Slattery Family Trust has on hand, or has access to, sufficient funds to satisfy the payment guarantee set forth herein. The Slattery Family Trust has provided to the United States documentation demonstrating the availability of such funds and hereby represents and warrants that the documentation is accurate and that the funds evidenced by such documentation will remain available through the Termination Date. The Slattery Family Trust has provided to the United States documentation demonstrating the authority of James Slattery, as a Trustee of the Slattery Family Trust, to obligate and control the trust funds and hereby represents and warrants that the documentation is accurate and that James Slattery shall maintain trustee authority through the Termination Date.

4. Waiver of Notice. MLH, TA, and Slattery each waives notice of the acceptance of this guarantee, presentment, demand, notice of dishonor, protest, notice of sale of any security, and all other notices whatsoever.

5. Consent to Jurisdiction. MLH, TA, and Slattery each consent to the jurisdiction of the United States District Court for the District of Massachusetts in any action to enforce the terms of this Guarantee Agreement.

6. Consent to Judgment. If an Avoidance Event occurs, MLH, TA, and Slattery each consent, to the entry of a judgment in the amount of the Guaranteed Payment that each has agreed to pay as provided herein, plus interest, costs of suit and attorneys' fees.

7. Limitation. Nothing in this Guarantee Agreement constitutes an agreement by the United States concerning the characterization of any amounts required to be paid hereunder for purposes of any proceeding under Title 26 of the Internal Revenue Code.

8. Miscellaneous. No party to this Guarantee Agreement may assign its rights, interests or obligations hereunder to any other person or entity without the prior written consent of the other parties. This Guarantee Agreement shall not be amended except in writing signed by all of the parties hereto. The provisions of this Guarantee Agreement shall be binding on all parties hereto and their successors. This Guarantee Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement. Each signatory hereto represents and warrants that he or she is authorized to execute and deliver this Guarantee Agreement on behalf of the party for whom he or she is purporting to act. Each party hereto warrants and represents that this Guarantee Agreement constitutes a valid and binding agreement, enforceable according to its terms.

Dated: This 16th day of October, 2015.

By:



JAMES SLATTERY
Millennium Lab Holdings, Inc.

Dated: 10-14-15

By:



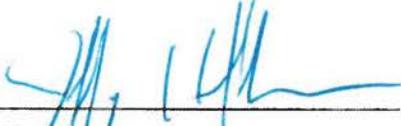
JAMES SLATTERY
As Trustee on behalf of the Slattery Family Trust

Dated: 10-14-15

TA XI, L.P.

By: TA Associates XI GP, L.P., its General Partner

By: TA Associates, L.P., its General Partner

By: 

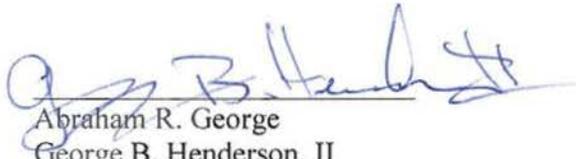
Jeffrey C. Hadden

Dated: 10/15/15

Chief Operating Officer and General Counsel

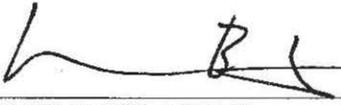
UNITED STATES OF AMERICA

By:



Abraham R. George
George B. Henderson, II
Assistant United States Attorneys
District of Massachusetts

Dated: 10/16/2015

By: 

Dated: 10-15-15

BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

By: _____

Dated: _____

MICHAEL K. LOUCKS
Counsel to Millennium Health, LLC

By: _____

Dated: _____

JOSEPH F. SAVAGE
Counsel to Millennium Health, LLC

By: _____
BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

Dated: _____

By: Michael K. Loucks ACB
MICHAEL K. LOUCKS
Counsel to Millennium Health, LLC

Dated: 10-15-15

By: [Signature]
JOSEPH F. SAVAGE
Counsel to Millennium Health, LLC

Dated: 10/15/15