

## 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 of the Department of Health and Human Services (“OIG-HHS”); Qualium Corporation (doing business as Bay Sleep Clinic and CPAP Specialist), Tahereh Nader, Anooshiravan Mostowfipour, and Amerimed Corporation (doing business as Amerimed Sleep Diagnostics and Amerimed CPAP Specialists) (collectively, “Defendants”); and Elma Dresser (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Qualium Corporation is a private corporation incorporated in the State of California in 2002, with an address in Saratoga, California. At all times relevant to this Agreement, Qualium Corporation owned a chain of clinics located in California doing business as Bay Sleep Clinic, and these clinics provided diagnostic services and treatment for sleep disorders. At all times relevant to this Agreement, Qualium Corporation, doing business as CPAP Specialist, dispensed durable medical equipment (“DME”).

B. Amerimed Corporation is a private corporation incorporated in the State of California in 2006, with an address in Saratoga, California.

C. Anooshiravan Mostowfipour, also known as Anoosh Mostowfi, is an individual residing in Saratoga, California. Together with Tahereh Nader, Mostowfipour owns 100 percent of and operates Qualium Corporation d/b/a Bay Sleep Clinic d/b/a CPAP Specialist and Amerimed Corporation. Mostowfipour serves as the President of Qualium Corporation and Chief Technologist of the Bay Sleep Clinic Los Gatos location. Mostowfipour serves as Chief

Executive Officer, Chief Financial Officer, & Director of Amerimed Corporation. Mostowfipour is a registered polysomnographic technologist.

D. Tahereh (Tara) Nader is an individual residing in Saratoga, California. Together with Mostowfipour, Nader owns 100 percent of and operates Qualium Corporation d/b/a Bay Sleep Clinic d/b/a CPAP Specialist and Amerimed Corporation. Nader serves as the Chief Executive Officer of Qualium Corporation and Managing Director of Bay Sleep Clinics. Nader serves as the Secretary and Director of Amerimed Corporation.

E. On April 4, 2012, Relator Elma Dresser filed an action in the United States District Court for the Northern District of California captioned *United States ex rel. Dresser v. Qualium Corp., et al.*, No. C 12-01745, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relator generally alleges that Defendants submitted false claims to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 *et seq.* ("Medicare") when they: 1) hired non-credentialed technologists to perform diagnostic sleep studies; 2) conducted studies on Medicare patients at sleep centers that were not approved by Medicare program, but nevertheless billed Medicare for such patients as if the studies had been conducted at a different, approved center; 3) unlawfully dispensed DME to Medicare beneficiaries from locations not approved by Medicare; 4) engaged in unlawful self-dealing by supplying DME following sleep-studies they conducted; 5) operated a DME dispensary from the same locations as the sleep clinics; 6) hired non-licensed or fraudulently licensed personnel to dispense DME to patients; 7) fraudulently induced CMS's approval of its two Medicare-enrolled facilities through knowing material misrepresentations on the enrollment applications; and 8) provided financial remuneration to doctors intended to induce patient-referrals for diagnostic sleep studies. The United States intervened as to certain claims in the Civil Action in May 2015 and filed the United States' Complaint in Intervention on September 2, 2015. The United States

filed an Amended Complaint on January 21, 2016 and a Second Amended Complaint on August 8, 2016. Relator filed a First Amended Complaint on September 2, 2015, a Second Amended Complaint on January 21, 2016, and a Third Amended Complaint on August 8, 2016.

F. On December 13, 2016, Defendants voluntarily terminated their Medicare enrollment by submitting updated form 855 and followed other applicable protocols requiring the submission of information to deactivate their Medicare billing numbers. As of the effective date of this Agreement, Defendants affirm that they are no longer enrolled in Medicare, and are ineligible to receive payments from the program.

G. The United States contends that it has certain civil claims against Defendants arising from the conduct alleged in the United States' Second Amended Complaint in Intervention (Docket No. 95) and the Relator's Third Amended Complaint (Docket No. 94), during the period from April 4, 2002 through the effective date of this Agreement. That conduct is referred to below as the "Covered Conduct."

H. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

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

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

#### TERMS AND CONDITIONS

1. Defendants shall pay to the United States **\$2,600,000.00** ("Settlement Amount") no later than ten (10) days after the Effective Date of this Agreement by electronic funds transfer

pursuant to written instructions to be provided by the U.S. Attorney's Office for the Northern District of California. Defendants are jointly and severally liable for the Settlement Amount.

2. Conditioned upon the United States receiving the Settlement Amount from Defendants and as soon as feasible after receipt, the United States shall pay \$545,000 to Relator by electronic funds transfer.

3. Relator claims entitlement under 31 U.S.C. § 3730(d) to Relator's reasonable expenses, attorneys' fees and costs. The Settlement Amount does not include the Relator's fees and costs, and Defendants acknowledge that Relator retains all rights to recover such expenses, attorneys' fees and costs from Defendants pursuant to 31 U.S.C. § 3730(d).

4. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon Defendants' full payment of the Settlement Amount and subject to Paragraph 17, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States releases Defendants 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.

5. Except as set forth in Paragraph 3 (concerning Relator's claims under 31 U.S.C. § 3730(d)), and subject to the exception of Paragraph 7 (concerning excluded claims), and conditioned upon Defendants' full payment of the Settlement Amount and subject to Paragraph 17, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), Relator, for herself and her heirs, successors and assigns, agents and attorneys, releases and forever discharges the Defendants and their officers, directors, employees, agents and attorneys from any claim legal or

equitable, that refers to, relates to, or arises out of the Covered Conduct that exists at the time of the signing of this Agreement, including but not limited to any claim the Relator may have on behalf of the United States, whether known or unknown. Relator acknowledges, understands and waives the provisions of California Civil Code section 1542 which reads:

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 the debtor.

6. Acknowledging Paragraph F, the Defendants' voluntary disenrollment from serving as a provider or supplier under Medicare, Defendants also agree not to re-enroll as a provider or supplier in the Medicare program through the completion and submission of any new enrollment application for a period of three years.

7. Notwithstanding the releases given in paragraphs 4 and 5 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 of individuals who are not Parties to this agreement;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

8. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but 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 her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever 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.

9. Defendants waive and shall not assert any defenses Defendants 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.

10. Defendants fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses

of every kind and however denominated) that Defendants have 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.

11. Defendants, for themselves and their officers, directors, employees, agents and attorneys, releases and forever discharges the Relator and her heirs, successors and assigns, agents and attorneys from any claims that exist at the time of the signing of this Agreement (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relator, related to the *qui tam* action and the Relator's investigation and prosecution thereof, whether known or unknown. Defendants acknowledge, understand, and waive the provisions of California Civil Code section 1542 which reads:

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 the debtor.

12. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (*e.g.*, Medicare Administrative Contractor, fiscal intermediary, carrier or any state payer) related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

13. Defendants agree 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 Defendants, 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) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) 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 Defendants make to the United States pursuant to this Agreement and any payments that Defendants 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 referred to as "Unallowable Costs").

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



c. Treatment of Unallowable Costs Previously Submitted for Payment:

Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendants or any of their 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. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants 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 Defendants or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendants 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 Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. 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 15 (waiver for beneficiaries paragraph), below.

15. Defendants agree that they waive 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 payers based upon the claims defined as Covered Conduct.

16. Defendants warrant that they have reviewed their financial situation and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Defendants, 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. 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 Defendants were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

17. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, any Defendant commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Defendant(s)' debts, or seeking to adjudicate Defendant(s) as bankrupt or insolvent; or (b) seeking appointment of a receiver,

trustee, custodian, or other similar official for Defendant(s) or for all or any substantial part of Defendant(s)' assets, each Defendant agrees as follows:

a. Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Defendants shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Defendants' obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Defendants were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendants.

b. If Defendants' obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States and/or Relator, at their sole option, may rescind their releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendant(s) for the claims that would otherwise be covered by the releases provided in Paragraphs 4 and 5, above and any release of administrative or civil claims. Defendants agree that (i) any such claims, actions, or proceedings brought by the United States or Relator 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 the first clause of this Paragraph, and Defendants shall not argue or otherwise contend that the United States' or Relator's claims, actions, or proceedings are subject to an automatic stay; (ii) Defendants shall not 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 proceeding that are brought by the United States or Relator within 90 calendar days of written notification to Defendants that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on April

4, 2012; and (iii) the United States and Relator each have an undisputed, non-contingent and liquidated allowed claim in the amount of three times their damages under the False Claims Act for the Covered Conduct, plus applicable statutory penalties, less any payments received hereunder, and the United States and/or Relator may pursue their claims in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Defendants acknowledge that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

18. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of the United States' Second Amended Complaint in Intervention and the Relator's Third Amended Complaint, pursuant to Rule 41(a)(1)(A)(ii), which stipulation shall provide that the Court shall retain jurisdiction over Relator's claim for reasonable expenses, attorney's fees, and costs pursuant to 31 U.S.C. § 3730(d).

19. Except with respect to payment by Defendants of Relator's attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d)(1) and/or per above Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

20. 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.

21. 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 Northern 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.

22. This Agreement constitutes the complete agreement between the Parties except for the Defendants' payment of Relator's attorneys' fees and costs under 31 U.S.C. § 3730(d). This Agreement may not be amended except by written consent of the Parties.

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

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

25. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.


26. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

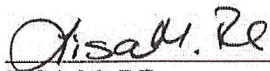
28. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 12/28/16

BY:   
ERICA BLACHMAN HITCHINGS  
ROBIN WALL  
Assistant United States Attorneys  
Northern District of California

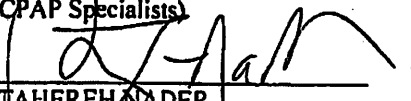
DATED: 12/27/16

BY:   
LISA M. RE  
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

**DEFENDANTS**

DATED: 12/22/16 BY:   
ANOOSHIRAVAN MOSTOWFIPOUR

In his individual capacity and as President, Qualium Corporation (doing business as Bay Sleep Clinic and CPAP Specialist); Chief Executive Officer, Chief Financial Officer, & Director, Amerimed Corporation (doing business as Amerimed Sleep Diagnostics and Amerimed CPAP Specialists)

DATED: 12/22/16 BY:   
TAHEREH NADER

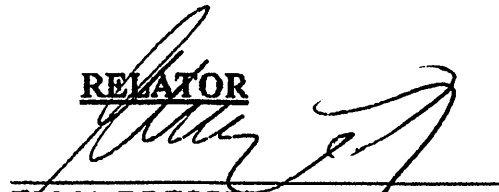
In her individual capacity and as Chief Executive Officer, Qualium Corporation (doing business as Bay Sleep Clinic and CPAP Specialist); Secretary and Director, Amerimed Corporation (doing business as Amerimed Sleep Diagnostics and Amerimed CPAP Specialists)

DATED: 12/22/16 BY:  ABG  
MICHAEL J. KHOURI  
Khouri Law Firm


Counsel for Defendants QUALIUM CORPORATION d/b/a BAY SLEEP CLINIC d/b/a CPAP SPECIALIST, TARA NADER, ANOOSHIRAVAN MOSTOWFIPOUR, and AMERIMED CORPORATION d/b/a AMERIMED SLEEP DIAGNOSTICS d/b/a AMERIMED CPAP SPECIALISTS

**RELATOR**

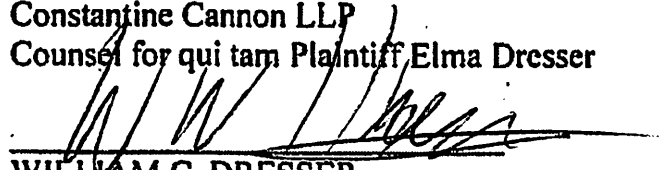
DATED: 12-22-16 BY:

  
\_\_\_\_\_  
ELMA DRESSER

DATED: 12/22/16 BY:

  
\_\_\_\_\_  
ANNE HAYES HARTMAN  
JESSICA MOORE  
Constantine Cannon LLP  
Counsel for qui tam Plaintiff Elma Dresser

DATED: 12/22/2016 BY:

  
\_\_\_\_\_  
WILLIAM C. DRESSER  
Counsel for qui tam Plaintiff Elma Dresser