

## 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) (collectively, the “United States”); Sylvia Daniel (Relator), and Vibra Healthcare, LLC, Vibra Healthcare II, LLC, Vibra of Southeastern Michigan, LLC, Vibra Specialty Hospital of Portland, LLC, Vibra Hospital of San Diego, LLC, 8451 Pearl Street Operating Company, LLC d/b/a Vibra Hospital of Denver, Vibra Specialty Hospital of Dallas, LLC, and 1300 Campbell Lane Operating Company, LLC d/b/a Southern Kentucky Rehabilitation Hospital (Vibra Healthcare, LLC and Vibra Healthcare II, LLC collectively, “Vibra Healthcare”; Vibra of Southeastern Michigan, LLC, Vibra Specialty Hospital of Portland, LLC, Vibra Hospital of San Diego, LLC, 8451 Pearl Street Operating Company, LLC, d/b/a Vibra Hospital of Denver, Vibra Specialty Hospital Dallas, LLC, and 1300 Campbell Lane Operating Company, LLC d/b/a Southern Kentucky Rehabilitation Hospital collectively “Applicable Vibra Facilities”; Vibra of Southeastern Michigan, LLC, Vibra Specialty Hospital of Portland, LLC, Vibra Hospital of San Diego, LLC, 8451 Pearl Street Operating Company, LLC, d/b/a Vibra Hospital of Denver, and Vibra Specialty Hospital Dallas, LLC, collectively “Applicable Vibra LTCH’s”; 1300 Campbell Lane Operating Company, LLC d/b/a Southern Kentucky Rehabilitation Hospital “Vibra SKY”; and all collectively, “Vibra”) identified herein, through their authorized representatives. All entities above will be referred to collectively as “the Parties.”

## RECITALS

A. Vibra Healthcare is a limited liability company with its principal place of business located at 4550 Lena Drive, Mechanicsburg, Pennsylvania, 17055. Vibra Healthcare operates freestanding acute medical rehabilitation hospitals and long term acute care hospitals, including in

the Southern District of Texas and the Western District of Kentucky. Applicable Vibra LTCH's are long term acute care facilities owned and operated by Vibra Healthcare, LLC. Vibra SKY is an acute medical rehabilitation hospital also owned and operated by Vibra Healthcare, LLC.

B. On December 21, 2010, Relator filed a *qui tam* action in the United States District Court for the Southern District of Texas captioned *United States ex rel. Sylvia Daniel, v. Vibra Healthcare, LLC, et al.*, Civil Action Number 4:10-cv-5099, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action"). In the Civil Action, Relator alleges, among other things, that Vibra Healthcare, LLC and Applicable Vibra LTCH's submitted, caused to be submitted, or conspired to submit false or fraudulent claims for payment for Medicare beneficiaries by, among other things, admitting patients who did not meet the Medicare criteria for admission to an LTCH and/or rehabilitation facility and fraudulently extending patient stays beyond what was medically necessary in order to obtain higher reimbursement and to get false or fraudulent claims paid.

In July 2011, as a result of a referral from Medicare's Program Safeguard Contractor, the United States Attorney's Office for the Western District of Kentucky began investigating Vibra SKY and Vibra Healthcare for submitting or conspiring to submit false or fraudulent claims for payment for Medicare beneficiaries by admitting patients who did not meet the Medicare criteria for admission to an acute medical rehabilitation hospital and who would have been more appropriately treated in a less intensive setting (such as a skilled nursing facility, outpatient therapy or through home healthcare). The investigation of Vibra SKY and Vibra Healthcare initiated by the United States Attorney's Office for the Western District of Kentucky is hereinafter referred to as the "Kentucky Investigation."

C. The United States contends that Vibra has submitted or caused to be submitted claims for payment to the Medicare Program, 42 U.S.C. §§ 1395, *et seq.*

D. The United States contends that it has certain civil claims against Vibra, jointly and severally, arising from the following conduct (hereinafter referred to as the “Covered Conduct”):

1. The United States alleges that from January 1, 2008, through March 31, 2013, Vibra Healthcare and Applicable Vibra LTCH’s engaged in a pattern and practice of admitting patients to Applicable Vibra LTCH’s who did not demonstrate signs or symptoms that would qualify them for admission to a long term acute care facility and/or whose conditions required treatment in an alternative setting, and improperly extended the stays of patients without regard to medical necessity, qualification, and/or quality of care and despite the fact that Vibra clinicians deemed these patients ready for discharge. The United States further alleges that this pattern and practice of conduct derived largely from persistent and excessive corporate pressure to increase admissions and lengths of stay, and impact the nature of care provided, to increase revenue. The United States further alleges that Vibra Healthcare and Applicable Vibra LTCH’s knowingly submitted or caused to be submitted false claims to Medicare for payment for these patients.

2. The United States alleges that from January 1, 2006, through April 24, 2009, Vibra Healthcare caused patients to be inappropriately admitted to Vibra SKY by pressuring Vibra SKY staff to inappropriately admit patients who did not meet the Medicare criteria for admission to an inpatient rehabilitation hospital and who would have been more appropriately treated in a less intensive setting (such as a skilled nursing facility, outpatient therapy or through home healthcare). The United States further alleges that Vibra Healthcare placed improper emphasis on metrics at Vibra SKY such as length of stay and case mix index and sought to reduce patient length of stay and scope of care provided without regard to medical necessity, qualification, and/or quality of care. The United States also alleges that such conduct derived largely from persistent and excessive corporate pressure to increase revenue. The United States further alleges that Vibra

Healthcare and Vibra SKY knowingly submitted or caused to be submitted false claims to Medicare for payment for these patients.

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

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to the share of the proceeds of this Agreement related to the Civil Action (that portion of the Covered Conduct described in Recital Section D.1), and to Relator's reasonable expenses, attorneys' fees and costs related to the same. Relator does not claim entitlement under 31 U.S.C. § 3730(d) to any share of the proceeds of this Agreement related to the Kentucky Investigation (that portion of the Covered Conduct described in Recital Section D.2). 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. Vibra shall pay to the United States the sum of THIRTY-TWO MILLION, SEVEN HUNDRED THIRTY-SEVEN THOUSAND, SIX HUNDRED FIFTY-FIVE DOLLARS (\$32,737,655), plus applicable interest as outlined herein, (the "Settlement Amount"), payable as follows:

- a. Vibra will pay to the United States TWO MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000) within 60 days of the Effective Date of this Agreement;
- b. Within one (1) year of the Effective Date of this Agreement, Vibra will pay to the United States the sum of EIGHTEEN MILLION, TWO HUNDRED THIRTY-SEVEN THOUSAND, SIX HUNDRED FIFTY-FIVE DOLLARS (\$18,237,655); and

c. In years 2, 3, 4 and 5 following the Effective Date of this Agreement, Vibra will pay an annual amount of THREE MILLION DOLLARS (\$3,000,000) per year (each an “Annual Payment”), plus interest at 3.5% per annum from the Effective Date of this Agreement continuing until and including the day before the Annual Payment is made under this Agreement. The Annual Payments shall be paid on or before the following dates:

- i) Year 2 Annual Payment: \$3,000,000 plus accrued interest on or before September 15, 2017;
- ii) Year 3 Annual Payment: \$3,000,000 plus accrued interest on or before September 15, 2018;
- iii) Year 4 Annual Payment: \$3,000,000 plus accrued interest on or before September 15, 2019; and
- iv) Year 5 Annual Payment: \$3,000,000 plus accrued interest on or before September 15, 2020.

Payment of the Settlement Amount shall be paid by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice. The entire principal balance of the Settlement Amount or any portion thereof, plus any interest accrued on the principal may be prepaid without penalty at any time. Any principal prepayments shall be applied to the Annual Payments with the earliest due date under this Agreement.

2. In the event that Vibra fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1, above, within seven (7) calendar days of the date upon which each such payment is due, Vibra shall be in default of its payment obligations under this Agreement (“Default”). The United States will provide a written notice of Default, and Vibra shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt

of the written notice of Default. Notice of Default will be delivered to Scot T. Hasselman, Esq., Reed Smith LLP, 1301 K Street NW, Suite 1000 – East Tower, Washington, D.C. 20005, or to such other representative as Vibra shall designate in advance in writing. If Vibra fails to cure the Default within seven (7) calendar days of receiving the notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

Vibra agrees not to contest any offset imposed and not to contest any collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States. At its sole option, the United States alternatively may rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Vibra for the claims that would otherwise be covered by the releases provided in Paragraphs 5-7, below. In the event that the United States opts to rescind this Agreement pursuant to this Paragraph, Vibra agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (a) filed by the United States against Vibra within 120 days of written notification that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on or before the Effective Date of this Agreement.

3. In the Event of Default as defined in Paragraph 2, above, OIG-HHS may exclude Vibra from participating in all Federal health care programs until Vibra pays the Settlement Amount as set forth in Paragraph 1, above. OIG-HHS will provide written notice of any such exclusion to Vibra. Vibra 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 Vibra wishes to apply for reinstatement, Vibra must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Vibra will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

4. Vibra agrees to pay a total of \$2,321,803.20 in full satisfaction of any claim Relator may have for attorneys' fees and costs, as contemplated by 31 U.S.C. § 3730(d) ("Relator's Fees"), to be paid as follows: (i) on or before September 15, 2016, or if the Effective Date of this Agreement is after September 15, 2016, within five days of the Effective Date of this Agreement, Vibra shall pay \$1,187,847.40 of the Relator's Fees to Relator; (ii) on or before March 15, 2017, Vibra shall pay \$566,977.98 of the Relator's Fees to Relator; and (iii) on or before September 15, 2017, Vibra shall pay \$566,977.98 of the Relator's Fees to Relator. Payments shall be made in accordance with written instructions to be provided by counsel for Relator.

5. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon the full payment of the Settlement Amount by Vibra, and subject to Paragraph 22, 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 Vibra, together with its current and former parent companies; direct and indirect subsidiaries; brother or sister companies; divisions; current or former company owners; and the company successors and assigns of any of them 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.

6. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon the full payment of the Settlement Amount by Vibra, and subject to Paragraph

22, 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 for her heirs, successors, attorneys, agents, and assigns, releases Vibra, together with its current and former parent companies; direct and indirect subsidiaries; brother or sister companies; divisions; current or former company owners; and the company successors and assigns of any of them from any civil monetary claim the relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

7. In consideration of the obligations of Vibra in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and Vibra, and conditioned upon the full payment of the Settlement Amount by Vibra, 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 Vibra 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 this Paragraph and in Paragraph 8 (concerning excluded claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Vibra 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.

8. Notwithstanding the releases given in Paragraphs 5-7 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- 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 of individuals;
- 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.

9. 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). The United States and Relator and her heirs, successors, attorneys, agents, and assigns agree as follows:

- a. Relator and the United States agree that, of the amount of proceeds received by the United States from Vibra as stated in Paragraph 1 herein (and, in the event of default, Paragraph 2), 74% of the proceeds are attributable to the Civil Action and 26% are attributable to the Kentucky Investigation.
- b. Relator explicitly agrees that, as authorized under 31 U.S.C. § 3730(d), she is only entitled to share in a percentage of the proceeds attributable to the

Civil Action (74% of the proceeds received pursuant to Paragraph 1 and, in the event of default, Paragraph 2).

- c. Relator explicitly agrees that she is not entitled to any share of the proceeds, pursuant to 31 U.S.C. § 3730(d) or any other statute or common law theory, that are attributable to the Kentucky Investigation (26% of the proceeds received pursuant to Paragraph 1 and, in the event of default, Paragraph 2).
- d. Conditioned upon the United States receiving the Settlement Amount payments from Vibra and as soon as feasible after receipt, and in accordance with Paragraphs 9.a through 9.c herein, the United States agrees that it shall pay to Relator by electronic funds transfer 20 percent of each such payment received under the Settlement Agreement that is attributable to the Civil Action as soon as feasible after receipt of the payment. Relator agrees that every payment received under the Settlement Agreement shall be allocated in accordance with Paragraph 9.a herein at the time the payment is made.
- e. Conditioned upon Relator's receipt of the payment described in Paragraph 9.d, Relator and 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 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.

10. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Vibra, together with its current and former parent companies; direct and indirect subsidiaries; brother or sister companies; divisions; current or former company owners; company successors and assigns; and its officers, agents, and employees, from any liability to Relator arising

from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

11. Vibra has provided financial disclosure statements (Financial Statements) to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Vibra warrants that the Financial Statements are complete, accurate, and current. If the United States learns of asset(s) in which Vibra had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by Vibra on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes either (a) the net income for "Consolidated Vibra Healthcare I & II" set forth on VSEM-P01653967 or (b) the total equity set forth on VSEM-P01653968 by \$1,350,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of either (a) the net income previously undisclosed on VSEM-P01653967 or (b) the total assets previously undisclosed on VSEM-P01653968. Vibra agrees not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

12. In the event that the United States, pursuant to Paragraph 11 (concerning disclosure of assets), above, opts to rescind this Agreement, Vibra agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 30 calendar days of written notification to Vibra that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

13. Vibra waives and shall not assert any defenses it 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.

14. Vibra 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 Vibra 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.

15. Vibra, together with its current and former parent companies; direct and indirect subsidiaries; brother or sister companies; divisions; current or former company owners; company successors and assigns; and its officers, agents, and employees fully and finally releases the Relator and her heirs, successors, attorneys, agents, and assigns from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Vibra has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

16. 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), TRICARE, Federal Employees Health Benefits Program (FEHBP), or any state payer, related to the Covered Conduct; and Vibra agrees

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

17. Vibra agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Vibra, 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) Vibra's 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;
- (5) the payments Vibra makes to the United States pursuant to this Agreement and any payments that Vibra may make to 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 Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in paragraph 17.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 Vibra.

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Vibra, and Vibra 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 Vibra or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Vibra further agrees that within 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 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 Vibra or any of its subsidiaries or affiliates, and shall request, and agrees, that such cost reports, cost statements, information reports, or payment

requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Vibra agrees that the United States, at a minimum, shall be entitled to recoup from Vibra 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 Vibra or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Vibra 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 Vibra's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

18. Vibra agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Vibra 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. Vibra 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.

19. 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 20 (waiver for beneficiaries paragraph), below.

20. Vibra agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or its parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

21. Vibra warrants that it has reviewed its financial situation and that it currently is 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 Vibra, 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 Vibra was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

22. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Vibra 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 Vibra's debts, or seeking to adjudicate Vibra as bankrupt



or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Vibra or for all or any substantial part of Vibra's assets, Vibra agrees as follows:

- a. The obligations of Vibra under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Vibra shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Vibra's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Vibra was 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 Vibra.
- b. If the obligations of Vibra 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, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Vibra for the claims that would otherwise be covered by the releases provided in Paragraphs 5-7, above. Vibra agrees that (i) 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 the first clause of this Paragraph, and Vibra shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Vibra 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 within 120 calendar days of written notification to Vibra that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the United States has a valid claim against Vibra, jointly and severally, in the amount of \$81,000,000, and the United States may pursue its claim 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. Vibra acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

23. On the Effective Date of this Agreement or any date thereafter the United States shall file in the Civil Action a Notice of Intervention as to the Covered Conduct. Upon receipt of the initial fixed payment in the amount of \$2,500,000 from Vibra, as described in Paragraph 1.a, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal as follows:

- a. The stipulation of dismissal shall be subject to the terms and conditions of this Agreement. The dismissal shall be with prejudice as to the United States' and Relator's claims as to the Covered Conduct;
- b. The stipulation of dismissal shall be without prejudice as to the United States and with prejudice as to Relator as to all other allegations set forth in the Civil Action.

24. Except for the separate agreement between Vibra and Realtor/Relator's counsel regarding the payment of fees and costs pursuant to 31 U.S.C. § 3730(d)(1) described in Paragraph

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

25. 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.

26. 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 Southern District of Texas. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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

30. This Agreement is binding on Vibra's successors, transferees, heirs, and assigns.

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

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

33. Unless otherwise agreed to in writing, all notices required by this Settlement Agreement shall be in writing and sent to the following:

On behalf of the United States:

Jill O. Venezia  
United States Attorney's Office, SDTX  
1000 Louisiana Street  
Suite #2300  
Houston, Texas 77002

And

Benjamin S. Schecter  
United States Attorney's Office, WDKY  
717 W. Broadway  
Louisville, Kentucky 40202

On behalf of Vibra:

Scot T. Hasselman, Esq.  
Reed Smith LLP  
1301 K Street NW, Suite 1000 – East Tower  
Washington, D.C. 20005

On behalf of Relator:

Joseph M. Callow, Jr.  
Keating Muething & Klekamp PLL  
One East 4th Street  
Suite 1400  
Cincinnati, OH 45202

34. 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.

[Signature Pages Follow]

THE UNITED STATES OF AMERICA

DATED: 9/20/16

BY:

Andy Mao  
Andy J. Mao  
Assistant Director  
Commercial Litigation Branch, Civil Division  
United States Department of Justice

DATED: 9/20/16

BY:

Jill O. Venezia  
Jill O. Venezia  
Assistant United States Attorney  
Southern District of Texas

DATED: 9/20/16

BY:

Benjamin S. Schecter  
Benjamin S. Schecter  
Assistant United States Attorney  
Western District of Kentucky

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

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

**THE UNITED STATES OF AMERICA**

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

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

Andy J. Mao  
Assistant Director  
Commercial Litigation Branch, Civil Division  
United States Department of Justice

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

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

Jill O. Venezia  
Assistant United States Attorney  
Southern District of Texas

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

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

Benjamin S. Schechter  
Assistant United States Attorney  
Western District of Kentucky

DATED: 9/20/16

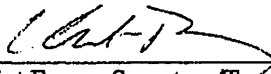
BY: Robert K. DeConti

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

VIBRA HEALTHCARE

DATED: 9/19/16

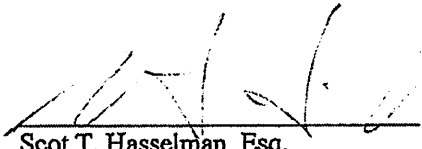
BY:

  
Clint Fegan, Secretary/Treasurer

On behalf of Vibra Healthcare, LLC; Vibra Healthcare II, LLC; Vibra of Southeastern Michigan, LLC; Vibra Specialty Hospital of Portland, LLC; Vibra Hospital of San Diego, LLC; 8451 Pearl Street Operating Company, LLC d/b/a Vibra Hospital of Denver; Vibra Specialty Hospital of Dallas, LLC; and 1300 Campbell Lane Operating Company, LLC d/b/a Southern Kentucky Rehabilitation Hospital

DATED: 9/19/16

BY:

  
Scot T. Hasselman, Esq.  
Katie C. Pawlitz, Esq.  
Reed Smith, LLP

Counsel for Vibra

**SYLVIA DANIEL**

DATED: 9/1/16

BY: Sylvia Daniel  
Sylvia Daniel  
Relator

DATED: 9/2/2016

BY: Gregory M. Uper  
Joseph M. Callow, Jr.  
Keating, Muething & Klekamp, PLL  
Counsel for Sylvia Daniel

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

BY: \_\_\_\_\_  
Joel D. Hesch  
The Hesch Firm LLC  
Counsel for Sylvia Daniel



**SYLVIA DANIEL**

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

BY: \_\_\_\_\_  
Sylvia Daniel  
Relator

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

BY: \_\_\_\_\_  
Gregory M. Utter  
Joseph M. Callow, Jr.  
Keating, Muething & Klekamp, PLL  
Counsel for Sylvia Daniel

DATED: 9-2-2016

BY: Joel D. Hesch  
Joel D. Hesch  
The Hesch Firm LLC

Counsel for Sylvia Daniel