

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA <i>ex rel.</i> ,)	
MELISSA THEIS and MELISSA THEIS,)	
Individually,)	
)	
Plaintiffs,)	
)	No. 09 C 1943
v.)	
)	Chief Judge Castillo
NORTHWESTERN UNIVERSITY, THE)	
ROBERT H. LURIE COMPREHENSIVE)	
CANCER CENTER OF)	
NORTHWESTERN)	
UNIVERSITY, DR. STEVEN T. ROSEN,)	
and DR. CHARLES L. BENNETT,)	
)	
Defendants.)	

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”), Northwestern University (“Northwestern”), and Melissa Theis (hereafter collectively referred to as “the Parties”), through their authorized representatives.

Recitals

A. Northwestern receives grant funding from the National Institutes of Health (“NIH”) for research related to Northwestern’s medical facilities and university.

B. On March 30, 2009, Melissa Theis (“Relator”) filed a *qui tam* action in the United States District Court for the Northern District of Illinois captioned *United States*

ex rel. Melissa Theis v. Northwestern University, the Robert H. Lurie Comprehensive Cancer Center of Northwestern University, Dr. Steven T. Rosen, and Dr. Charles L. Bennett, Case No. 09 C 1943, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). The Civil Action alleges that defendants submitted false claims to the United States when Drs. Rosen and Bennett directed and authorized the spending of grant funds on goods and services that did not meet applicable NIH and Office of Management and Budget grant guidelines.

C. The United States contends that it has certain civil claims against Northwestern arising out of Northwestern's improper submission of claims to NIH for grant expenditures for:

(1) Professional and consulting services, subcontracts to the University of Illinois, airfare and other transportation, conference registration fees, food, hotel, travel, meals, and other expenditures for items that were for the personal benefit of Dr. Charles L. Bennett, his friends, and family; and

(2) Subcontracts to entities other than the University of Illinois, incentives, supplies, equipment, salaries, benefits, and associated Facilities and Administrative (F&A) expenditures;

(collectively, "the Grant Expenditures") that were incurred in connection with certain grants as to which Dr. Charles Bennett was a Principal Investigator. The United States further contends that these Grant Expenditures did not meet applicable NIH and Office of Management and Budget grant guidelines, and were improperly charged to the following grants between January 1, 2003, and August 31, 2010: Research on Adverse Drug-Events and Reports: Novel Multiple Myeloma Drugs, NIH grant number CA 125077;

Research on Adverse Drug-Events and Reports, NIH grant number CA 102713; Study of TTP: Incidence Rates and Risk Factors, NIH grant number HL 69717; Patient Navigator, NIH grant number CA116875, and Multi-City Study of HIV-PCP, NIH grant number DA10628. The conduct set forth in this Paragraph C is hereinafter referred to as the Covered Conduct.

D. This Settlement Agreement is neither an admission of liability by Northwestern nor a concession by the United States that its claims are not well founded. Northwestern expressly denies the allegations of the United States and Relator set forth herein and in the Civil Action.

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

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

Terms and Conditions

1. Northwestern shall pay to the United States \$2,930,000 (Settlement Amount) by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Northern District of Illinois no later than 14 days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount from Northwestern, and as soon as feasible after receipt, the United States shall pay \$498,100

to Relator by electronic funds transfer, pursuant to written instructions to be provided by Relator's Counsel.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Northwestern's full payment of the Settlement Amount, the United States releases Northwestern and its current and former subsidiaries, affiliates, officers, directors, employees, and agents (collectively, the "Northwestern Released Parties") from any civil or administrative monetary claims the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, or fraud.

4. Subject to the exceptions in Paragraph 5 below, and conditioned upon Northwestern's full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to dismiss with prejudice any currently pending claim against any of the Northwestern Released Parties in any federal or state court or in any other forum, and to fully and finally release, waive and forever discharge the Northwestern Released Parties from any claims or allegations that Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, or which Relator may now have or claim to have against the Northwestern Released Parties, and from any and all claims, claims for relief, actions, rights, causes of action, suits, debts, obligations, liabilities, demands, losses, damages (including treble damages and any civil penalties), punitive damages, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, in law or in equity, in contract or tort, or under any state or federal statute or regulation or

arising in any way out of or connected in any way with the facts, claims, and circumstances alleged in, arising under, or arising from the filing of the Civil Action, or from any past activities and actions of the Northwestern Released Parties, or 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, or any similar federal or state statute. Relators' release of the Northwestern Related Parties does not extend to any claims by Relator and/or her counsel for reasonable attorneys' fees, expenses and costs resulting from the Civil Action, pursuant to 31 U.S.C. § 3730(d).

5. Nothing in this Agreement precludes any agency in HHS from imposing corrective actions or special award conditions on a grant pursuant to 42 C.F.R. § 52.9 or 45 C.F.R. § 74.14. Nothing in this Agreement precludes any HHS agency from taking enforcement actions pursuant to 45 C.F.R. § 74.62, including but not limited to, limiting future grant awards. Notwithstanding the releases given in paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in the Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;

- 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;
- i. Any liability of individuals (including current or former directors, officers, employees, or agents, of Northwestern) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted or charged, or who enter into a plea agreement, related to the Covered Conduct; or
- j. Any liability of Dr. Charles L. Bennett for the Covered Conduct set forth in Paragraph C(1) of this Agreement.

6. 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 discharge the United States, its agencies, officers, agents, employees, and

servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730 and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. Northwestern waives and shall not assert any defenses Northwestern may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. Upon entry of the Joint Stipulation of Dismissal, pursuant to paragraph 13 below, the Northwestern Related Parties (other than Dr. Charles L. Bennett) agree to release Relator, her heirs, successors, attorneys, agents, assigns, from any liability arising from her employment, this lawsuit, and under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

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

10. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Northwestern, and its present or former officers, directors, employees, 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) Northwestern'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 payment Northwestern makes to the United States pursuant to this Agreement and any payments that Northwestern may make to Relator, including costs and attorney's fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Northwestern and Northwestern shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Northwestern shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Northwestern or any of its subsidiaries or affiliates from the United States. Northwestern agrees that the United States, at a minimum, shall be entitled to recoup from Northwestern any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Northwestern's books and records and to disagree with any calculations submitted by Northwestern or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Northwestern, or the effect of any such Unallowable Costs on the amount of such payments.

11. Northwestern agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Northwestern 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 by the United States and testimony, consistent with the rights and privileges of such individuals. Northwestern 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.

12. This Agreement is intended to be for the benefit of the Parties only.

13. 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 of the Civil Action pursuant to Rule 41(a)(1), as to Northwestern University.

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

15. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

16. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of Illinois. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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

20. This Agreement is binding on Northwestern's successors, transferees, heirs, and assigns.

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

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

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

THE UNITED STATES OF AMERICA

GARY S. SHAPIRO
United States Attorney

DATED _____ By: _____

KURT N. LINDLAND
Assistant United States Attorney
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Chicago, Illinois 60604
(312) 353-4163
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DATED: _____ By: _____

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Assistant Inspector General for Legal Affairs
Office of Counsel to the
Inspector General
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United States Department of
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NORTHWESTERN UNIVERSITY - DEFENDANT

DATED: _____ By: _____
THOMAS G. CLINE
Vice President & General Counsel
Northwestern University

DATED: _____ By: _____
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MELISSA THEIS- RELATOR

DATED: _____ BY: _____
MELISSA THEIS

DATED: _____ BY: _____
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