

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among (a) the United States of America, acting through the U.S. Attorney's Office for the District of South Carolina; (b) Laboratory Corporation of America Holdings (Labcorp); and (c) Scarlett Lutz and Kayla Webster (collectively, Relators), through their authorized legal representatives. Collectively, all the above will be referred to as "the Parties."

RECITALS

A. Labcorp, a Delaware corporation with a principal place of business in North Carolina, is a provider of clinical laboratory services.

B. On February 6, 2013, Relators filed a *qui tam* action in the United States District Court for the Western District of North Carolina, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b). On January 27, 2014, the United States District Court for the Western District of North Carolina transferred the action to the United States District Court for the District of South Carolina (the Court). On September 18, 2014, the Court severed the allegations against Labcorp, and on September 26, 2014, Relators filed a Severed Second Amended Complaint against Labcorp. On September 23, 2015, Relators filed a Third Amended Complaint against Labcorp. On June 26, 2018, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), Relators filed a Fourth Amended *Qui Tam* Complaint (Dkt. No. 50) against Labcorp captioned *United States ex rel. Lutz et al. v. Laboratory Corporation of America Holdings*, No. 9:14-cv-3699-RMG (D.S.C.) (collectively, the Civil Action).

C. Relators, on behalf of the United States, contend that Labcorp submitted, caused the submission, and/or conspired in the submission of false claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (Medicare).

D. Relators, on behalf of the United States, contend that the United States has certain civil claims against Labcorp arising from its submission, causing the submission of and/or conspiring in the submission of false claims to Medicare from January 1, 2010 through December 31, 2014 as a result of Labcorp's provision of phlebotomy services for patients whose health care providers were ordering laboratory testing from Labcorp, Health Diagnostics Laboratory, Inc. (HDL) and/or Singulex, Inc. (Singulex) at a time when Relators allege Labcorp knew HDL and/or Singulex were paying health care providers process and handling fees as an inducement to refer patients to their laboratories. That conduct is referred to below as the "Covered Conduct."

E. This Settlement Agreement is neither an admission of liability by Labcorp nor a concession by Relators or the United States that the civil claims are not well founded. Labcorp denies the allegations in the Civil Action and the Covered Conduct.

F. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators' 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. Labcorp shall pay to the United States \$19,000,000.00, of which \$12,700,000.00 is restitution, no later than thirty (30) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of South Carolina.

2. Conditioned upon the United States receiving the Settlement Amount from Labcorp, and as soon as feasible after receipt, the United States shall pay \$5,605,000.00 to Relators by electronic funds transfer (Relators' Share).

3. Labcorp's payment to Relators for reasonable expenses, attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d)(2) shall be addressed separately from this Agreement pursuant to a mediation process agreed to by Labcorp and the Relators.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States releases Labcorp together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, and/or divisions; current or former corporate owners; and/or the corporate 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 Anti-Kickback Statute, 42 U.S.C. § 1320a-7b; 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. Upon the United States' receipt of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys (current and former), agents, and assigns, release, waive and forever discharge Labcorp together with its current and/or former officers, directors and employees; current and/or parent corporations, direct and indirect subsidiaries, brother or sister corporations and/or divisions; current or former corporate owners; and/or the corporate successors and assigns of any of them (a) from any and all claims, whether in law or in equity, whether known or unknown, that Relators have or may have through the Effective Date of this Agreement, including claims Relators have on behalf of the United States, and (b) from any and all claims

Relators have asserted, could have asserted, or may assert in the future related to the Covered Conduct and/or the Civil Action, including all claims for practices, activities or conduct of which Relators learned prior to or during the pendency of this lawsuit. Notwithstanding the foregoing, Relators' release for attorneys' fees and costs is conditioned upon Labcorp's payment of reasonable attorneys' fees and costs pursuant to the process referenced in Paragraph 3 above.

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims and rights 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 or enforcement right, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for 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.

7. Relators and their 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 Relators' receipt of the Relators' Share, Relators and their 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.

8. Labcorp waives and shall not assert any defenses Labcorp 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.

9. Labcorp fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Labcorp 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 Civil Action, the Covered Conduct, or the United States' investigation or prosecution thereof.

10. Labcorp fully and finally releases Relators and their heirs, successors, attorneys, agents, and assigns from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Labcorp has asserted, could have asserted, or may assert in the

future against the Relators, related to the Civil Action, the Covered Conduct, and the Relators' investigation and prosecution thereof.

11. 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) related to the Covered Conduct; and Labcorp agrees not to resubmit to any Medicare contractor 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.

12. Labcorp 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 Labcorp, 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) Labcorp'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 attorneys' fees);
- (4) the negotiation and performance of this Agreement; and

- (5) the payment Labcorp makes to the United States pursuant to this Agreement and any payments that Labcorp may make to Relators, including costs and attorneys' 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 Labcorp, and Labcorp 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 Labcorp or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Labcorp 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 Labcorp 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. Labcorp agrees that the United States, at a minimum, shall be entitled to recoup from Labcorp 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 Labcorp or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Labcorp 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 Labcorp's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

13. 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 Paragraphs 4, 5, 9, 10 and 14 (waiver for beneficiaries paragraph).

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

15. Upon receipt of the payment described in Paragraph 1, above, Relators and Labcorp shall promptly, and not later than 5 days, sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1), which proposed Joint Stipulation of Dismissal is attached hereto as Exhibit A. The Joint Stipulation of Dismissal shall be with prejudice as to the Relators' claims, on behalf of the United States, against Labcorp in the Civil

Action as to the Covered Conduct and consistent with the terms and conditions of this Agreement. The Joint Stipulation of Dismissal shall be with prejudice to the United States only as to the Covered Conduct and with prejudice to the Relators as to all claims, including but not limited to those allegations and claims in the Civil Action.

16. Except as set forth in 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.

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

18. 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 South Carolina. 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.

19. Except for the separate agreement concerning Relators' fees and costs as referenced in Paragraph 3, which shall be incorporated herein, this Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

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

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

22. This Agreement is binding on Labcorp's successors, transferees, heirs, and assigns.

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

24. All parties understand that the United States or the Relators may disclose this Agreement and information about this Agreement to the public.

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

[SIGNATURE PAGE(S) FOLLOW]

RELATORS

DATED: 01/24/23

BY: 

SCARLETT LUTZ

DATED: _____

BY: _____
KAYLA WEBSTER

COUNSEL FOR SCARLETT LUTZ AND KAYLA WEBSTER

DATED: _____

BY: _____
MARC S. RASPANTI, ESQUIRE
PAMELA COYLE BRECHT, ESQUIRE
Pietragallo Gordon Alfano Bosick & Raspanti, LLP

DATED: _____

BY: _____
STEPHEN SHACKELFORD, JR., ESQUIRE
STEVEN SHEPARD, ESQUIRE
Susman Godfrey L.L.P.

DATED: _____

BY: _____
BETH B. RICHARDSON, ESQUIRE
Robinson Gray Stepp & Laffitte, LLC

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RELATORS

DATED: _____ BY: _____
SCARLETT LUTZ

DATED: 1/24/23 BY: Kayla Webster
KAYLA WEBSTER

COUNSEL FOR SCARLETT LUTZ AND KAYLA WEBSTER

DATED: _____ BY: _____
MARC S. RASPANTI, ESQUIRE
PAMELA COYLE BRECHT, ESQUIRE
Pietragallo Gordon Alfano Bosick & Raspanti, LLP

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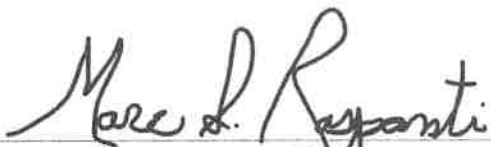
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RELATORS

DATED: _____ BY: _____
SCARLETT LUTZ

DATED: _____ BY: _____
KAYLA WEBSTER

COUNSEL FOR SCARLETT LUTZ AND KAYLA WEBSTER

DATED: 1-24-23 BY: 
MARC S. RASPANTI, ESQUIRE
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Pietragallo Gordon Alfano Bosick & Raspanti, LLP

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KAYLA WEBSTER

COUNSEL FOR SCARLETT LUTZ AND KAYLA WEBSTER

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PAMELA COYLE BRECHT, ESQUIRE
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DATED: _____ BY: _____
STEPHEN SHACKELFORD, JR., ESQUIRE
STEVEN SHEPARD, ESQUIRE
Susman Godfrey L.L.P.

DATED: 1/24/23 BY: Beth B. Richardson
BETH B. RICHARDSON, ESQUIRE
Robinson Gray Stepp & Laffitte, LLC

#7926562/1

THE UNITED STATES OF AMERICA

ADAIR F. BOROUGHS
United States Attorney
District of South Carolina

DATED:

1/24/23

BY:

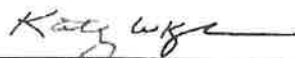


JAMES C. LEVENTIS, JR.
Assistant United States Attorney

LABCORP

DATED: 01/31/2023


BY:


KATHRYN W. KYLE
Senior Vice President & Assistant Secretary

COUNSEL FOR LABORATORY CORPORATION OF AMERICA HOLDINGS

DATED: 2/1/2023

BY:


STEPHEN G. SOZIO
HEATHER M. O'SHEA
Jones Day

DATED: 1/31/2023

BY:


JAMES LYNN WERNER
Parker Poe