

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS); the Office of Personnel Management (OPM), which administers the Federal Employees Health Benefits Program (FEHBP); and the Defense Health Agency (DHA), acting on behalf of the TRICARE Program, through its General Counsel (collectively the "United States"); Adventist Health System Sunbelt Healthcare Corporation (“Adventist”); and Heather Huddleston (“Relator”), (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Adventist is a non-profit health care organization that operates hospitals and other health care facilities in ten states, including Florida.

B. On or about July 2010, Heather Huddleston, then an employee of Adventist, disclosed to Adventist certain information, including that Adventist had administered to certain patients portions of single-dose vials of chemotherapy drugs remaining from administrations to other patients.

C. On January 20, 2012, Adventist voluntarily disclosed this and other conduct to the Department of Justice and initially paid \$819,828.82 to the United States (Medicare and TriCare Programs) and the State of Florida (Medicaid).

D. In February 2013, Relator filed a *qui tam* action in the United States District Court for the Middle District of Florida captioned United States ex rel. Huddleston v. Adventist Health System Sunbelt Healthcare Corporation, Case No. 8:13-cv-710-T-27-EAJ, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator

alleges that Adventist: administered to certain patients portions of single-dose vials of chemotherapy drugs remaining from administrations to other patients; “upcoded” IV and infusion therapy related to administration of those drugs; and maintained unsafe workplace conditions regarding those drugs. The United States intervened in the Civil Action on November 14, 2014.

E. The United States contends that Adventist submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395III (“Medicare”); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”); the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”); and the FEHBP, 5 U.S.C. §§ 8901-8914.

F. The United States contends that it has certain civil claims against Adventist arising from:

1. the administration of remaining portions of chemotherapy drugs to the patients identified in Appendix A on the dates listed therein;
2. the administration of platinum based drugs in close proximity to saline to the patients identified in Appendix B on the dates listed therein;
3. the upcoding of those infusion services listed in Appendix C, which were administered to Medicare patients at the Adventist facility designated as OLNDOFLLM2, ORLANDO2LM, and/or ORLANDOFL2 between January 1, 2007, and May 31, 2011, and billed to Medicare Part B; and
4. the admission of the patients identified in Appendix D for the dates listed therein.

Each of the above types of conduct is hereafter referred to collectively as the “Covered Conduct.”

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

H. 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. Adventist shall pay to the United States the amount of \$2,091,399.99 (Two Million Ninety-One Thousand Three Hundred Ninety Nine Dollars and Ninety Nine Cents) ("Settlement Amount") no later than 14 calendar 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 Middle District of Florida. Adventist shall be entitled to a credit of \$819,828.82 (Eight Hundred Nineteen Thousand Eight Hundred Twenty-Eight Dollars and Eighty-Two Cents) against the Settlement Amount, for amounts which have been repaid previously.

2. Adventist's obligation to pay Relator's expenses, attorney's fees, and/or costs (if any) shall be determined at a later date and is not affected by this Agreement.

3. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon Adventist's full payment of the Settlement Amount, the United States releases Adventist, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions and the 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.

4. Subject to the exceptions in Paragraph 8 below, and conditioned upon Adventist's full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Adventist 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.

5. In consideration of the obligations of Adventist in this Agreement, and conditioned upon Adventist's full payment of the Settlement Amount, 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 Adventist 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 Adventist 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.

6. In consideration of the obligations of Adventist set forth in this Agreement, and conditioned upon Adventist's full payment of the Settlement Amount, DHA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against Adventist under 32 C.F.R. § 199.9 for the Covered

Conduct, except as reserved in this Paragraph and in Paragraph 8 (concerning excluded claims), below. DHA expressly reserves authority to exclude Adventist from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii) (mandatory exclusion), based upon the Covered Conduct. Nothing in this Paragraph precludes DHA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below.

7. In consideration of the obligations of Adventist in this Agreement, and conditioned upon Adventist's full payment of the Settlement Amount, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative action against Adventist under 5 U.S.C. § 8902a or 5 C.F.R. Part 890 Subpart J or Part 919 for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 8 (concerning excluded claims), below, and except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). OPM expressly reserves all rights to comply with any statutory obligation to debar Adventist from the FEHBP under 5 U.S.C. § 8902a(b) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below.

8. Notwithstanding the releases given in paragraphs 3 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 for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- i. Any liability of individuals.

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). In connection with this Agreement and this Civil Action, Relator and her heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relator from sharing in the proceeds of this Agreement. Moreover, the United States and Relator and her heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of her claim(s), and that no agreements concerning Relator share have been reached to date.

10. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Adventist, 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. Adventist waives and shall not assert any defenses Adventist 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.

12. Adventist 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 Adventist 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.

13. Adventist fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Adventist has asserted, could have asserted, or may assert in the future against the Relator, related to the Civil Action and the Relator's investigation and prosecution thereof.

14. 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 OPM or DHA, or any their contractors, or any state payer, related to the Covered Conduct; and Adventist agrees not to

resubmit to any Medicare contractor, or OPM or DHA, or any of their contractors, 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.

15. Adventist 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 Adventist, 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) Adventist, 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 Adventist makes to the United States pursuant to this Agreement and any payments that Adventist 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 Adventist, and Adventist 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 Adventist or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c.. Treatment of Unallowable Costs Previously Submitted for Payment: Adventist 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 Adventist 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. Adventist agrees that the United States, at a minimum, shall be entitled to recoup from Adventist 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 Adventist or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this

Paragraph) on Adventist 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 Adventist's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

16. This Agreement is intended to be for the benefit of the Parties only, except as specifically stated herein. The Parties do not release any claims against any other person or entity.

17. Adventist 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 their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

18. Upon receipt of the payment described in Paragraph 1, above, the United States and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1), by the United States with prejudice as to the Covered Conduct and by the Relator with prejudice to the Civil Action.

19. 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 Middle District of Florida. 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. 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 Adventist, 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: 1/29/2016

BY: Charles T. Harden III
CHARLES T. HARDEN III
Assistant U.S. Attorney
Office of the United States Attorney
for the Middle District of Florida

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

DATED: _____

BY: _____
PAUL J. HUTTER
General Counsel
Defense Health Agency
United States Department of Defense

DATED: _____

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

DATED: _____

BY: _____
J. DAVID COPE
Assistant Inspector General for Legal Affairs
United States Office of Personnel Management

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
CHARLES T. HARDEN III
Assistant U.S. Attorney
Office of the United States Attorney
for the Middle District of Florida

DATED: 1/29/16

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

DATED: _____

BY: _____
PAUL J. HUTTER
General Counsel
Defense Health Agency
United States Department of Defense

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United States Office of Personnel Management

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
CHARLES T. HARDEN III
Assistant U.S. Attorney
Office of the United States Attorney
for the Middle District of Florida

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

DATED: 1/26/2016

BY: _____
BLEY.PAUL.NICHOLAS.1099873821
873821
for PAUL J. HUTTER
General Counsel
Defense Health Agency
United States Department of Defense

Digitally signed by BLEY.PAUL.NICHOLAS.1099873821
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ou=DHA, cn=BLEY.PAUL.NICHOLAS.1099873821
Date: 2016.01.26 10:25:43 -05'00'

DATED: _____

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

DATED: _____

BY: _____
J. DAVID COPE
Assistant Inspector General for Legal Affairs
United States Office of Personnel Management

DATED: _____

BY: _____

CHARLES T. HARDEN III
Assistant U.S. Attorney
Office of the United States Attorney
for the Middle District of Florida

DATED: _____

BY: _____

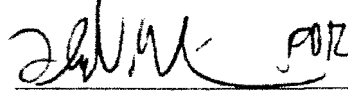
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

DATED: _____

BY: _____

PAUL J. HUTTER
General Counsel
Defense Health Agency
United States Department of Defense

DATED: 1-27-16

BY:  _____

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


DATED: 1/29/16

BY:  _____


J. DAVID COPE
Assistant Inspector General for Legal Affairs
United States Office of Personnel Management

ADVENTIST HEALTH SYSTEM
SUNBELT HEALTHCARE CORPORATION

DATED: 1/22/16

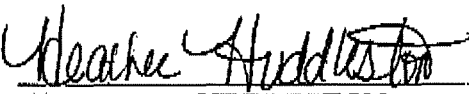
BY: 
JEFFREY S. BROMME
Chief Legal Officer

DATED: 1/26/16

BY: 
GABRIEL IMPERATO, ESQ.
BROAD AND CASSEL
Counsel for Adventist

HEATHER HUDDLETON - RELATOR

DATED: 1-26-16

BY: 
HEATHER HUDDLETON

DATED: 1/26/2016

BY: 
JOHN YANCHUNIS
Counsel for Relator