

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 Defense Health Agency (“DHA”), acting on behalf of the TRICARE Program (collectively, the “United States”); Jack L. Stapleton, Jack Hunter Stapleton (collectively the “Stapleton Defendants”), CV McDowell, LLC, J&J Tel Marketing, LLC (collectively, with the Stapleton Defendants, the “Defendants”); and Dwayne Thornton (the “Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

- A. Jack L. Stapleton (hereinafter “Jack Stapleton”) is a resident of Gulf Stream, Florida.
- B. Jack Hunter Stapleton is a resident of Fort Lauderdale, Florida.
- C. CV McDowell, LLC was a Florida limited liability company owned and controlled by the Stapleton Defendants with its principal place of business in Fort Lauderdale, Florida. CV McDowell engaged in the telemarketing of, among other things, compounded prescription drugs.
- D. J&J Tel Marketing, LLC was a Florida limited liability company owned and controlled by the Stapleton Defendants with its principal place of business in Fort Lauderdale, Florida. J&J Tel Marketing engaged in the telemarketing of, among other things, compounded prescription drugs.
- E. Victoria Stapleton is the spouse of Jack Stapleton. Jack Stapleton and Victoria Stapleton jointly own the property referred to in this Agreement as the Gulf Stream Property. Victoria Stapleton is a signatory to this Agreement only for purposes of the representations, agreements, and obligations described in Paragraphs 1.i through 1.m of this Agreement.

F. On November 12, 2015, Relator filed a *qui tam* action in the United States District Court for the Middle District of Florida captioned *United States ex rel. Thornton v. National Compounding Company et al.*, No. 8:15-cv-2647, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator filed a First Amended Complaint on April 21, 2017, a Second Amended Complaint on May 23, 2018, and a Third Amended Complaint on July 15, 2019. The United States partially intervened in the Civil Action as to certain claims and defendants and filed the United States’ Complaint in Partial Intervention on August 24, 2018.

G. As set forth in the United States’ Complaint in Partial Intervention, the United States contends that the Defendants submitted or caused to be submitted claims for payment to the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”).

H. The United States contends that it has certain civil claims against the Defendants as described in the United States’ Complaint in Partial Intervention. That conduct is referred to below as the “Covered Conduct.”

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

J. 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. The Stapleton Defendants agree to pay to the United States four million dollars (\$4,000,000.00) plus any additional amounts due pursuant to Paragraph 1.c below (the

“Settlement Amount”). Of these amounts, two million dollars (\$2,000,000.00) constitutes restitution to the United States. The Settlement Amount shall be paid as follows:

- a. Initial payment. The Stapleton Defendants shall pay to the United States one million dollars (\$1,000,000.00) no later than ten (10) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.
- b. Sale of Fort Lauderdale Property. Jack Hunter Stapleton agrees to promptly undertake efforts to sell, and consummate a sale of, the real property owned by him at 310 SE 11th Avenue, Fort Lauderdale, Florida, inclusive of all easements and other interests held in conjunction with or as part of his ownership of that property (collectively, the “Fort Lauderdale Property”) in an arm’s length transaction, using best efforts to sell that property at the maximum price as approved by the United States pursuant to Paragraph 1.d below.
- c. Within the earlier of 180 days after the Effective Date of this Agreement or ten (10) days after the closing date for the sale of the Fort Lauderdale Property (unless an extension is expressly agreed to by the United States in writing) the Stapleton Defendants shall pay to the United States one million seven hundred thousand dollars (\$1,700,000.00). If the Net Proceeds (as defined below) of the sale of the Fort Lauderdale Property exceed \$3,400,000.00, the Stapleton Defendants shall instead pay to the United States fifty percent (50%) of the Net Proceeds, with credit for any portion of the \$1,700,000.00 already paid pursuant to this paragraph

(Paragraph 1.c); but in no event will the total amount paid to the United States pursuant to this Paragraph 1.c be less than \$1,700,000.00. For purposes of this paragraph, Net Proceeds shall mean all money realized from the sale of the Fort Lauderdale Property after deducting only the following: (1) real estate commission(s) to realtor(s) or agent(s), based upon the standard and customary real estate commission for sales of residential property in Fort Lauderdale, Florida, (2) fees, costs, and expenses that are customarily paid by the seller of residential property in Fort Lauderdale, Florida, (3) the amount owed by Jack Hunter Stapleton for 2018 Federal income taxes (but not to exceed \$557,238.72) and (4) any other amounts expressly approved by the United States in writing.

- d. The United States shall be provided documents showing, shall have a reasonable opportunity to review, and shall have approval authority over the following regarding the Fort Lauderdale Property: the listing sales price, the final sales price, the terms of any agreement with a broker or real estate agent, and any fees, costs, and expenses paid by the seller. Prior to accepting any offer to purchase the Fort Lauderdale Property, Jack Hunter Stapleton shall provide written notice of the proposed sale price (and all commission(s), fee(s), and/or other costs and expenses) to the United States, which shall have ten (10) business days after receipt to object. At least five (5) business days before the closing of any sale of the Fort Lauderdale Property, Jack Hunter Stapleton shall provide copies of any settlement statement, closing statement, settlement sheet, or other document detailing all amounts due to buyer and seller and any amounts

paid from buyer's and seller's funds at settlement or otherwise.

Additionally, within five (5) business days after the closing date for the sale of the Fort Lauderdale Property, Jack Hunter Stapleton shall provide the United States with notice of the sale and copies of all closing documents.

- e. Jack Hunter Stapleton agrees to grant the United States a security interest and lien (or mortgage) (the "Fort Lauderdale Lien") on the Fort Lauderdale Property, which shall secure the Defendants' obligations under Paragraph 1.c of this Agreement. A copy of the Fort Lauderdale Lien is attached hereto as Exhibit B. Jack Hunter Stapleton shall take all steps necessary to record (and otherwise perfect) the Fort Lauderdale Lien no later than 10 business days after the Effective Date of this Agreement. Copies of the recorded documents shall be provided to the United States. All fees and costs of any kind associated with recording the Fort Lauderdale Lien shall be paid by Defendants. The United States may enforce the Fort Lauderdale Lien only upon an Event of Default, and only up to the remaining unpaid amounts then due pursuant to Paragraph 1.c, as well as any amounts that may become due pursuant to Paragraph 16 as a result of the Event of Default. Jack Hunter Stapleton agrees that the Fort Lauderdale Lien is enforceable by the United States upon an Event of Default, and he expressly and unconditionally waives any benefit of the homestead exemption afforded by the Florida Constitution and Section 196.031 of the Florida Statutes (as well as any other homestead exemptions or protections under any applicable state or federal law) as to

this obligation. Within a reasonable time after receipt of the payment due under Paragraph 1.c, the United States shall provide Jack Hunter Stapleton with proof that the Fort Lauderdale Lien has been released.

- f. Notwithstanding any tax liabilities disclosed to the United States in his Financial Disclosures (see Paragraph 8 below), Jack Hunter Stapleton expressly represents that there is no outstanding mortgage or any other encumbrance on the Fort Lauderdale Property. Jack Hunter Stapleton agrees that he shall not further encumber the Fort Lauderdale Property with any mortgages, deeds of trust, lines of credit, or other debts, liens, or security interests, other than as described in Paragraph 1.e of this Agreement. Jack Hunter Stapleton also agrees that he will keep and maintain the property in good condition and repair, and that he will maintain insurance on the Fort Lauderdale Property in the same manner and scope as existing on the Effective Date of this Agreement.
- g. All payments made to the United States pursuant to Paragraph 1.c shall be made by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.
- h. Annual Payments. The Stapleton Defendants shall pay one million three hundred thousand dollars (\$1,300,000.00), plus interest at a rate of one percent (1.00%) per annum from the Effective Date of this Agreement, pursuant to the payment schedule set forth in Exhibit A.
- i. Gulf Stream Property. In the event any portion of the payments required pursuant to Paragraph 1.h remain unpaid as of January 1, 2024 (including the payment due by December 31, 2024), Jack Stapleton and Victoria

Stapleton agree that they will then promptly undertake efforts to sell, and consummate a sale of, the property owned by them at 1230 N. Ocean Boulevard, Gulf Stream, Florida, inclusive of all easements and other interests held in conjunction with or as part of their ownership of that property (collectively, the “Gulf Stream Property”) in an arm’s length transaction, using best efforts to sell that property at the maximum price as approved by the United States pursuant to Paragraph 1.m below. Any portion of the payments required pursuant to Paragraph 1.h, plus interest, then remaining shall be paid by the Stapleton Defendants within ten (10) days after the closing date for the sale of the Gulf Stream Property, but in no event later than December 31, 2024 (unless an extension is expressly agreed to by the United States in writing).

- j. In the event Jack Stapleton and Victoria Stapleton sell the Gulf Stream Property prior to January 1, 2024, all payments required pursuant to Paragraph 1.h that remain unpaid at the time of such sale shall become immediately due and payable and shall be paid by the Stapleton Defendants within ten (10) days after the closing date for the sale of the Gulf Stream Property.
- k. Jack Stapleton and Victoria Stapleton agree to grant the United States a security interest and lien (or mortgage) (the “Gulf Stream Lien”) on the Gulf Stream Property, which shall secure the Defendants’ obligations under Paragraphs 1.h through 1.j of this Agreement. A copy of the Gulf Stream Lien is attached hereto as Exhibit C. Jack Stapleton and Victoria Stapleton shall take all steps necessary to record (and otherwise perfect)

the Gulf Stream Lien no later than 10 business days after the Effective Date of this Agreement. Copies of the recorded documents shall be provided to the United States. All fees and costs of any kind associated with recording the Lien shall be paid by Defendants. The United States may enforce the Gulf Stream Lien only upon an Event of Default, and only up to the remaining unpaid amounts then due pursuant to Paragraphs 1.h-1.j, as well as any amounts that may become due pursuant to Paragraph 16 as a result of the Event of Default. Jack Stapleton and Victoria Stapleton agree that the Gulf Stream Lien is enforceable by the United States upon an Event of Default, and they expressly and unconditionally waive any benefit of the homestead exemption afforded by the Florida Constitution and Section 196.031 of the Florida Statutes (as well as any other homestead exemptions or other protections under any applicable state or federal law) as to this obligation. Within a reasonable time after receipt of all payments due under Paragraphs 1.h – 1.j, the United States shall provide Jack Stapleton and Victoria Stapleton with proof that the Gulf Stream Lien has been released.

1. Jack Stapleton and Victoria Stapleton expressly represent that there is no outstanding mortgage or any other encumbrance on the Gulf Stream Property other than the existing mortgage disclosed on Jack Stapleton's Financial Disclosures (see Paragraph 8 below). Jack Stapleton and Victoria Stapleton agree that they shall not further encumber the Gulf Stream Property with any mortgages, deeds of trust, lines of credit, or other debts, liens, or security interests, other than as described in

Paragraph 1.k of this Agreement. Jack Stapleton and Victoria Stapleton also agree that they will keep and maintain the property in good condition and repair, and that they will maintain insurance on the Gulf Stream Property in the same manner and scope as existing on the Effective Date of this Agreement.

- m. In the event the Gulf Stream Property is sold pursuant to the scenarios contemplated in Paragraphs 1.i or 1.j, the United States shall be provided documents showing, shall have a reasonable opportunity to review, and shall have approval authority over the following: the listing sales price, the final sales price, the terms of any agreement with a broker or real estate agent, and any fees, costs, and expenses paid by the seller. Prior to accepting any offer to purchase the Gulf Stream Property, Jack Stapleton and Victoria Stapleton shall provide written notice of the proposed sale price (and all commission(s), fee(s), and/or other costs and expenses) to the United States, which shall have ten (10) business days after receipt to object. At least five (5) business days before the closing of any sale of the Gulf Stream Property, Jack Stapleton and Victoria Stapleton shall provide copies of any settlement statement, closing statement, settlement sheet, or other document detailing all amounts due to buyer and seller and any amounts paid from buyer's and seller's funds at settlement or otherwise. Additionally, within five (5) business days after the closing date for the sale of the Gulf Stream Property, Jack Stapleton and Victoria Stapleton shall provide the United States with notice of the sale and copies of all closing documents.

- n. All payments made to the United States pursuant to Paragraphs 1.h – 1.j shall be made by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.
- o. Any of the payments due under Paragraphs 1.a – 1.o may be prepaid, in whole or in part, without penalty or premium.

2. The Stapleton Defendants agree to pay Relator for expenses, attorney’s fees, and costs pursuant to 31 U.S.C. § 3730(d) as follows:

a. The Stapleton Defendants shall pay Relator the sum of \$50,000 no later than ten (10) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Relator; and

b. Within ten (10) days after the closing date for the sale of the Fort Lauderdale Property (unless an extension is expressly agreed to by the Relator in writing) the Stapleton Defendants shall pay to the Relator an additional sum of \$50,000 by electronic funds transfer pursuant to written instructions to be provided by the Relator.

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and subject to Paragraph 8 (concerning disclosure of assets), Paragraph 16 (concerning default), and Paragraph 17 (concerning bankruptcy) below, and upon the United States’ receipt of the full Settlement Amount, plus interest due under Paragraph 1.h, the United States releases the Defendants from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 5 below, and subject to Paragraph 8 (concerning disclosure of assets), Paragraph 16 (concerning default), and Paragraph 17 (concerning bankruptcy) below, and upon the United States' receipt of the full Settlement Amount, plus interest due under Paragraph 1.h, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases the Defendants 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. Notwithstanding the releases given in Paragraph 3 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 of individuals other than the Stapleton Defendants;
- 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;

- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Relator and his 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 his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act, 31 U.S.C. § 3730, on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of his claims, and that no agreements concerning Relator share have been reached to date, other than Relator's agreement not to contend that he is entitled to a share in excess of twenty-five percent (25%) of the settlement proceeds.

7. Subject to the exceptions in Paragraph 5 (concerning reserved claims), and subject to Paragraph 8 (concerning disclosure of assets), Paragraph 16 (concerning default), and Paragraph 17 (concerning bankruptcy), and upon the United States' receipt of the full Settlement Amount, plus interest due under Paragraph 1.h, and upon the Relator's receipt of the full amounts the Stapleton Defendants have agreed to pay for Relator's expenses, attorney's fees and costs that are due under Paragraph 2, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases the Defendants, and their officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, and for any claim for payment of expenses, attorneys' fees, or costs under 31 U.S.C. § 3730(d).

8. The Defendants have provided sworn financial disclosures and supporting documents (together "Financial Disclosures") to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. The Defendants warrant that the Financial Disclosures are complete, accurate, and

current as of the Effective Date of this Agreement. If the United States learns of asset(s) in which the Defendants had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy the Defendants' obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by the Defendants on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Stapleton Defendants' Financial Disclosures by \$200,000 or more, the United States may at its option:

- (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or
- (b) collect the full Settlement Amount plus interest in accordance with the Agreement plus one hundred percent (100%) of the net value of the Stapleton Defendants' previously undisclosed assets. The Defendants agree not to contest any collection action undertaken by the United States pursuant to this provision, and agree that they will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph, rescinds this Agreement, the Defendants waive and agree 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 120 calendar days of written notification to the Defendants that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on November 12, 2015.

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

10. The Defendants fully and finally release 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 they have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants related to the Covered Conduct, the Civil Action, or the United States' investigation or prosecution thereof.

11. The Defendants fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct, the Civil Action, or the Relator's investigation and prosecution thereof.

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

13. The Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Defendants or their 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) the Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payments the Defendants make to the United States pursuant to this Agreement and any payments that the Defendants may make to Relator, including costs and attorneys' fees

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and FEHBP (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by the Defendants, and the Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost

statement, information statement, or payment request submitted by the Defendants or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by the Defendants or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. The Defendants agree that the United States, at a minimum, shall be entitled to recoup from the Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by the Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on the Defendants or any of their 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 the Defendants' books and records to determine

that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

14. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 15 (waiver for beneficiaries paragraph), below.

15. The Defendants agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

16. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct.

a. In the event that the Stapleton Defendants fail to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, the Stapleton Defendants shall be in Default of their payment obligations (“Default”). The United States will provide a written Notice of Default, and the Defendants shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to the Defendants, or to such other representative as the Defendants shall designate in advance in writing. If Defendants do not designate a representative in writing, Notice of Default may be sent to their counsel of record in the Civil Action. In any event, receipt of Notice of Default shall be presumed upon sending. If the Defendants fail to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule (“Uncured 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).

b. In the event of Uncured Default, the Defendants agree that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against the Defendants for the claims that would otherwise be covered by the releases provided in Paragraph 3 above, with any recovery reduced by the amount of any payments previously made by the Defendants to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to the Defendants and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, the Defendants agree immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, the Defendants waive and agree 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 (i) filed by the United States against the Defendants within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on

November 12, 2015. The Defendants agree not to contest any offset, recoupment, and /or 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. In the event of rescindment by the United States, whatever rights the Relator could have asserted in connection with the Civil Action prior to dismissal will be restored to the Relator.

c. In the event of Uncured Default, the Office of Inspector General of the Department of Health and Human Services (OIG-HHS) may exclude the Defendants from participating in all Federal health care programs until the Defendants pay the Settlement Amount, with interest, as set forth above (“Exclusion for Default”). OIG-HHS will provide written notice of any such exclusion to the Defendants. The Defendants waive any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agree 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, the Defendants wish to apply for reinstatement, they must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. The Defendants will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

17. In exchange for valuable consideration provided in this Agreement, the Stapleton Defendants acknowledge the following:

a. The Stapleton Defendants have reviewed their financial situation and warrant that they are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to the Stapleton Defendants, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which the Stapleton Defendants were or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If the Stapleton Defendants' obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, either of the Stapleton Defendants or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of the Defendant's debts, or to adjudicate the Defendant as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for the Defendant or for all or any substantial part of his assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against the Defendants for the claims that would otherwise be covered by the releases provided in Paragraph 3 above; and

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against the Stapleton Defendants, jointly and severally, in the amount of six million dollars (\$6,000,000) less any payments received pursuant to this agreement, provided, however,

that such payments are not otherwise avoided and recovered from the United States by the Defendants, a receiver, trustee, custodian, or other similar official for the Defendants.

f. The Defendants agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 17.e is not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States’ police and regulatory power. The Defendants shall not argue or otherwise contend that the United States’ claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). The Defendants waive and 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 claim, action, or proceeding brought by the United States within 120 days of written notification to the Defendants that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on November 12, 2015.

18. Upon the United States’ receipt of (1) the payment described in Paragraph 1.a of this Agreement and (2) the recorded lien documents described in Paragraphs 1.e and 1.k of this Agreement, 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). The stipulation shall provide that dismissal shall be subject to the terms of the Settlement Agreement, and that dismissal shall be (1) with prejudice to the Relator, except that any claim Relator has to a share of the settlement proceeds and any claim for expenses, attorney’s fees, and costs under 31 U.S.C. § 3730(d) shall not be dismissed, (2) with prejudice to the United States only as to the Covered Conduct, and (3) otherwise without prejudice to the United States. Upon the Relator’s receipt of the payments from Defendants described in Paragraph 2 for expenses, attorney’s fees and costs, Relator and

Defendants shall sign and file in the Civil Action a Joint Stipulation of Dismissal of the Relator's Claims for Attorney's Fees.

19. Except as provided in Paragraph 2, above, 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 into this Agreement without any degree of duress or compulsion. Further, each party and signatory to this Agreement represents that they have had adequate opportunity to consult with legal counsel of their choice regarding the terms of this Agreement prior to their execution of this Agreement.

21. This Agreement is governed by the laws of the United States. The exclusive 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. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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 the Defendants' successors, transferees, heirs, and assigns.


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

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

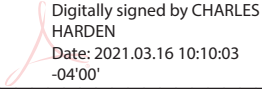
28. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 3/16/2021

BY: 
NATHAN P. GREEN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: CHARLES 
HARDEN
Date: 2021.03.16 10:10:03
-04'00'
CHARLES T. HARDEN III
Assistant United States Attorney
Middle District of Florida

DATED: _____

BY: _____
SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

NATHAN P. GREEN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____

CHARLES T. HARDEN III
Assistant United States Attorney
Middle District of Florida

DATED: 03/15/20021

BY: LAS.1099873821

BLEY.PAUL.NICHO
Digitally signed by
BLEY.PAUL.NICHOLAS.1099873821
Date: 2021.03.15 22:13:37 -04'00'

SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

JACK L. STAPLETON - DEFENDANT

DATED: 3/15/2021

BY: 
JACK L. STAPLETON

DATED: 3-15-21

BY: 

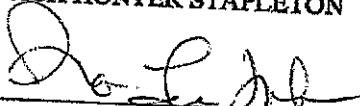
Name: Ira Lee Sorokin
Counsel for Jack L. Stapleton

JACK HUNTER STAPLETON - DEFENDANT

DATED: 3/15/2021


BY: 
JACK HUNTER STAPLETON

DATED: 3-15-21

BY: 
Name: Ira Lee Sorkin
Counsel for Jack Hunter Stapleton

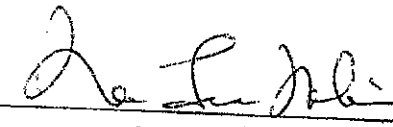
CV MCDOWELL, LLC - DEFENDANT

DATED: 3/15/2021 BY: 
JACK L. STAPLETON
Manager

DATED: 3-15-21 BY: 
Name: Ira Lee Sorokin
Counsel for CV McDowell, LLC

J&J TEL MARKETING, LLC - DEFENDANT

DATED: 3/15/2021 BY: 
JACK L. STAPLETON
Manager

DATED: 3-15-21 BY: 
Name: Ira Lee Sorokin
Counsel for J&J Tel Marketing, LLC


DWAYNE THORNTON - RELATOR

DATED: 3/12/21

BY: 

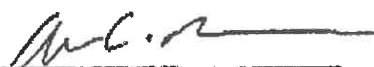
DWAYNE THORNTON

DATED: 3/12/21

BY: 

David K. Colapinto
KOHN, KOHN & COLAPINTO, LLP
1710 N Street, N.W.
Washington, D.C. 20036
Counsel for Relator

DATED: 3/11/21

BY: 

Anthony C. Munter
PRICE BENOWITZ, LLP
409 7th Street, N.W.
Washington, DC 20004
Counsel for Relator

VICTORIA STAPLETON

For purposes of Paragraphs 1.i through 1.m only.


DATED: 3/15/21

BY: 
VICTORIA STAPLETON

DATED: _____

BY: _____

Name: _____
Counsel for Victoria Stapleton

Check here and initial here  if no attorney signing on behalf of Victoria Stapleton