

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice, and on behalf of the Office of Inspector General ("HHS-OIG") of the United States Department of Health and Human Services ("HHS"), the Tricare Management Activity (formerly the Office of Civilian Health and Medical Program of the Uniformed Services ("OCHAMPUS/TRICARE")) through the Office of General Counsel, a field activity of the Office of the Secretary of Defense, the United States Department of Defense, (collectively, the "United States"); the State of Oklahoma, through the Office of Attorney General; the State of New York, by the Medicaid Fraud Control Unit of the New York State Attorney General's Office; Relator Carol Pellegrino ("Relator"); and the successor corporation to Quantum Health Resources ("Quantum" or "Defendant") and its parent corporation Olsten Corporation ("Olsten") together with their respective parents, subsidiaries, successors, and affiliates (collectively, "the Quantum Parties"). The United States, HHS-OIG, Relator, and the Quantum Parties are collectively referred to herein as "the Parties."

II. PREAMBLE

A. Quantum is a wholly owned subsidiary of Olsten which is a corporation with its principal offices located at 175 Broad

Hollow Road, Melville, New York. Olsten purchased Quantum in 1996. Quantum has been in the business of providing antihemophilia factor products, including, but not limited to, Monoclote P, Mononine, Recombinate, Hemofil M, and Kogenate ("Factor Products"), to individuals suffering from serious medical conditions, such as hemophilia. As part of its business, Quantum purchased these Factor Products from manufacturers and wholesalers, and, in turn, provided the Factor Products directly to individual patients. Quantum then submitted claims for reimbursement to, among others, the Medicare, OCHAMPUS/TRICARE programs, and the Medicaid programs of the states of California, New York, and Oklahoma. The officials from these identified federal and state programs authorized payment of many of these claims.

B. This Agreement governs the United States', the state of New York's, the state of Oklahoma's and the Relator's civil claims against Defendant and the Quantum Parties for the conduct alleged in the qui tam complaint for violations of the False Claims Act and common law counts in United States ex rel. Carol Pellegrino v. Quantum Health Resources, Case No. 95-10001 (C.D. Cal.). This Agreement also governs all "Released Acts" as that term is defined herein in Paragraph II.C.

C. The United States, the States of New York and Oklahoma, and Relator allege that from January 1, 1990 through August 6, 1996 with respect to the United States and the state of Oklahoma

and through July 31, 1997 with respect to the New York Medicaid claims (both federal and state share), Quantum knowingly submitted or caused to be submitted false or fraudulent information, and/or false or fraudulent claims for payment to the Medicare and the OCHAMPUS/TRICARE programs and the Medicaid programs of the States of New York, Oklahoma, and California in connection with the provision of Factor Products. The United States and Relator, as to all of these claims, and the States of New York and Oklahoma, as to the claims submitted to each of them, allege that these claims from on or about January 1, 1990 to August 6, 1996 and to July 31, 1997, with respect to New York, were submitted for the purpose of obtaining reimbursement from the Medicare and the OCHAMPUS/TRICARE programs and the Medicaid program for Quantum's providing the Factor Products to the public and were false and fraudulent because Quantum personnel falsely and knowingly:

- (i) represented to state of California Medicaid officials that the per unit acquisition costs of the Factor Products were higher than they actually were by virtue of Quantum's knowing failure to disclose that it received discounts from the manufacturer of the Factor Products;
- (ii) represented to state of Oklahoma Medicaid officials that the per unit acquisition costs of the Factor Products were higher than they actually were by virtue

of Quantum's knowing failure to disclose that it received discounts from the manufacturers of the Factor Products;

(iii) represented to the Medicaid officials of the State of New York that the per unit acquisition costs of the Factor Products were higher than they actually were by virtue of Quantum's knowing failure to disclose to those State officials that it received discounts from the manufacturers of the Factor Products because of their contractually negotiated purchases of those substances.

(iv) Relator further alleges that: (a) Quantum may have accepted assignment of benefits improperly under the Medicare and Medicaid programs; and (b) Quantum may have completed patient infusion logs incorrectly under federal and state programs.

(v) The United States and Relator further allege that these fraudulent claims were submitted to the Medicaid programs of the states of California, New York and Oklahoma by Quantum in violation of the False Claims Act, 31 U.S.C. §§ 3729-3733, and the common law. All of the above-referenced acts in Paragraph II C are hereinafter referred to as the "Released Acts",

D. The United States also contends that Quantum engaged in conduct which would permit the United States to pursue certain administrative claims against the Quantum Parties under the

provisions for permissive exclusion from the Medicare, Medicaid, OCHAMPUS/TRICARE, and other Federal Health Care Programs (as defined by 42 U.S.C. § 1320a-7b(f)), pursuant to 42 U.S.C. § 1320a-7a and 42 U.S.C. § 1320a-7(b); civil monetary penalties, 42 U.S.C. § 1320a-7a; and the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, for the Released Acts.

E. The Quantum Parties maintain that: (a) information or claims for Factor Products provided to the Medicare, OCHAMPUS/TRICARE, and Medicaid Programs of the States of California, New York and Oklahoma were not false or fraudulent; and (b) there was no improper conduct in connection with the Medicare, OCHAMPUS/TRICARE and Medicaid Programs of the States of California, New York and Oklahoma with respect to the allegations regarding assignment of benefits or infusion logs. Therefore, the Quantum Parties have denied all allegations of wrongdoing. This Agreement shall not be construed as an admission by the Quantum Parties of any liability or any improper or wrongful conduct in connection with any matter in dispute.

F. To avoid the expense, burden, and uncertainty of further litigation, the parties have mutually agreed to settle this matter pursuant to this Agreement.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for good and valuable consideration as stated herein, the Parties hereby agree as follows:

1. The Quantum Parties agree to pay to the United States, the State of New York, the State of Oklahoma, and the Relator the sum of FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS (\$4,500,000) (the "Settlement Amount"). Payment of the Settlement Amount to the United States, the State of New York, and the State of Oklahoma shall be as described below at Paragraph III.1(a)-(c), and to the Relator, as described below in Paragraph III.6, as follows:

(a) The Quantum Parties agree to make payment of \$2,854,121.04 to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States. The Quantum Parties agree to make this electronic funds transfer within three (3) calendar days of the execution of this Agreement.

(b) With respect to the State of Oklahoma, the Quantum Parties will make payment of \$71,472, Oklahoma's state share of recovered money of the Settlement Amount, directly to the state of Oklahoma by certified or cashier's check to the Medicaid Fraud Control Unit of the Oklahoma Attorney General's Office, within

three (3) calendar days of the execution of this Agreement.

(c) With respect to the State of New York, the Quantum Parties will be jointly and severally liable for and make payment of the sum of \$926,539 ("the New York Medicaid Payment") from the Settlement Amount described herein. The New York Medicaid Payment shall be made directly to the Deputy Attorney General MFCU Restitution Fund by two certified checks within three (3) calendar days of the execution of this Agreement.

2. The provisions of this Agreement concerning release from the Medicare, OCHAMPUS/TRICARE, and Medicaid programs are as follows: Subject only to the exceptions in Paragraph III.3 below, and in consideration of the obligations of Defendant and the Quantum Parties set forth in this Agreement, and conditioned upon the Quantum Parties' payment in full of the Settlement Amount to each respective party;

(a) the United States hereby releases and discharges the Quantum Parties and any and all of their respective present and former: shareholders, officers, directors, predecessors, successors and assigns, and employees (hereinafter collectively referred to as the "Released Parties") from any or all civil or administrative monetary claims that the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; Civil Monetary Penalties Law, 48 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 and unjust enrichment for the

Released Acts.

(b) The State of Oklahoma hereby releases and discharges the Released Parties from any or all civil or administrative monetary claims that the State of Oklahoma has or may have under the common law theories of fraud, payment by mistake, and unjust enrichment for the Released Acts.

(c) The State of New York hereby releases and discharges the Released Parties from any or all civil or administrative monetary claims or other remedies that the State of New York has or may have under New York law, including but not limited to N.Y.Soc.Serv. Law § 366-b; N.Y.Soc.Serv. Law § 145-b; N.Y. Penal Law §§ 175.00 et seq.; N.Y. Penal Law §§ 176.00 et seq.; N.Y. Penal Law §§ 190.60 and 190.65; N.Y. Ins. Law § 403; or under common law theories, such as fraud, payment by mistake, and unjust enrichment for the Released Acts.

(d) The State of New York hereby releases and forever discharges the Quantum Parties from any and all criminal claims or remedies that the State of New York has or may have for the Released Acts.

(e) The Parties to this Agreement agree to execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

3. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of the releases given by the United States and the States of New York and Oklahoma to the Released Parties are any and all of the

following claims that the United States and/or the States of New York and Oklahoma may have for:

- (a) Any civil, criminal or administrative claims arising under Title 26, United States Code (Internal Revenue Code), Internal Revenue Service regulations or securities laws;
- (b) Any criminal liability (except as provided above in Paragraph III.2(d)) for the Released Acts and any administrative action for mandatory exclusion pursuant to 42 U.S.C. § 1320a-7(a);
- (c) Any liability to the United States (or its agencies) for any conduct other than the Released Acts. Additionally, any liability to the United States (or its agencies) for any conduct under review by the United States Attorney's Office for the District of New Mexico (including any OCHAMPUS/TRICARE claims being reviewed by an investigative agency in New Mexico);
- (d) Any liability to the states of Oklahoma or New York for any conduct other than the Released Acts;
- (e) Any claims based upon such obligations as are created by this Agreement or by the Corporate Integrity Agreement referenced in Paragraph III.8;
- (f) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality or quantity of goods and services, provided by the Released Parties;

- (g) Any claims against any individuals or entities not included among the Released Parties;
- (h) Any civil claims against individuals, including current or former directors, officers, employees, agents or shareholders of the Released Parties who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Released Acts;
- (i) Any claims submitted by the Released Parties after August 6, 1996 with respect to the United States and the State of Oklahoma and after July 31, 1997 with respect to the New York Medicaid claims (both federal and state share); and
- (j) With regard to the State of New York, any dispute or disputes between the Quantum Parties and the State of New York, including but not limited to those disputes that have been or may be asserted in the proceeding named and styled Quantum Health Resources, d/b/a Olsten Heath (sic) Services, Petitioner v. Barbara DeBuono, as Commissioner of the New York State Department of Health, et al., Respondents, Albany County Supreme Court Index No. 7504-97, regarding fees or other monies the Quantum Parties claim to be owed by the State of New York for goods and/or services heretofore provided by Quantum or the Quantum Parties, or any counterclaims or cross claims asserted or to be asserted by the State

of New York with respect thereto.

4. In consideration of the mutual promises and obligations of this Agreement, and in accordance with a separate agreement executed by Relator and the Quantum Parties, Relator has released and discharged the Released Parties from any and all causes of action as described in the separate agreement.

5. In consideration of the obligations of the Released Parties set forth in this Agreement, and conditioned upon the Released Parties' payment in full of the Settlement Amount, the HHS-OIG agrees to release and refrain from initiating, instituting, directing or maintaining any administrative claim or any action seeking permissive exclusion from the Medicare, Medicaid or other Federal health care programs against the Released Parties under 42 U.S.C. § 1320a-7a, or 42 U.S.C. § 1320a-7(b), for the Released Acts, as defined herein, except as reserved in Paragraph III.3. Nothing in this paragraph precludes the HHS-OIG from taking action against entities or persons, or for conduct and practices, not covered under this Agreement.

6. In consideration of the mutual promises and obligations of this Agreement, and in accordance with a separate agreement executed by Relator and the Quantum Parties, the Released Parties have released Relator from any and all causes of action, as described in the separate agreement, and agree to pay directly to Carol Pellegrino, the Relator, \$647,867.96 or 18.5% of the United States' share of the Settlement Amount. Such payment shall be

made payable to Relator and Relator's Counsel, jointly, by wire transfer or by certified or cashier's check and shall be delivered to Relator's Counsel within three (3) calendar days of the date of execution of this Agreement.

7. Relator agrees that this settlement is fair, adequate, and reasonable, and will not challenge the Agreement pursuant to 31 U.S.C. § 3730(c)(2)(B).

8. Contemporaneous with the execution of this Settlement Agreement, the Released Parties will enter into a Corporate Integrity Agreement with HHS-OIG.

9. The Released Parties waive and will not assert any defenses they may have to any criminal prosecution or administrative action relating to the Released Acts, which defenses may be based in whole or in part on the contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action and further agree that the Settlement Amount is not punitive in nature or effect for purposes of 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. The Released Parties further agree that the Settlement Amount or any amounts paid to the States of New York

and Oklahoma or Relator pursuant to this Agreement are not punitive in nature or in effect and shall not be a bar or impediment to any criminal prosecution or administrative action.

10. The Released Parties fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Released Parties have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, relating to the Released Acts.

11. The Relator fully and finally releases the United States, its agencies, employees, servants, and agents from any claims which the Relator has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, relating to the Released Acts and this qui tam matter.

12. Concurrent with the execution of this Settlement Agreement and payment of the Settlement Amount by the Released Parties to the United States and the States of New York and Oklahoma and to the Relator, the Parties shall execute a Joint Stipulation of Dismissal with Prejudice. The Joint Stipulation of Dismissal with Prejudice will request that the Court, inter alia, enter an order dismissing with prejudice the case styled United States ex rel. Carol Pellegrino v. Quantum Health Resources, Case No. 95-10001 (C.D. Cal.) concurrent with the

United States' filing of its Notice of Election to Intervene in this qui tam matter. The Parties will request, however, that the Court retain jurisdiction — concurrently with the courts of the States of New York and Oklahoma for the portions pertaining to each respective state — to enforce the terms of the Agreement. The Joint Stipulation of Dismissal with Prejudice shall in no way effect any claims, counterclaims or cross claims asserted or to be asserted by the Released Parties against the State of New York, regarding fees or other monies owed to the Released Parties by the State of New York, as referenced above in Paragraph III.3(i).

13. The Released Parties agree that all costs (as defined in the Federal Acquisition Regulations ("FAR") 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations promulgated thereunder) incurred by or on behalf of the Released Parties in connection with (1) the matters covered by this Agreement, (2) the Government's audit and investigation of the matters covered by this Agreement, (3) the Released Parties' investigation, defense, and corrective actions undertaken in response to the Government's investigation in connection with the matters covered by this Agreement including the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Settlement Agreement, (4) the negotiation of this Agreement, and (5) the payments made pursuant to this Agreement, are unallowable costs for Government contract

accounting and for Medicare, Medicaid, OCHAMPUS/TRICARE, Veterans' Administration and FEHBP reimbursement purposes (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by the Quantum Parties, and the Released Parties will not charge such unallowable costs directly or indirectly to any contracts with the United States or any state Medicaid program, or to any cost report, cost statement, or payment request submitted by the Released Parties or any of their subsidiaries to the Medicare, Medicaid, OCHAMPUS/TRICARE, Veterans' Administration or FEHBP programs.

14. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

15. The Parties agree that this Agreement does not constitute an admission by any person or entity with respect to any issue of law or fact.

16. The United States, the states of New York and Oklahoma, and the Released Parties will bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement. In accordance with a separate agreement executed by Relator and the Quantum Parties, costs incurred by Relator, including attorney's fees, will be reimbursed to Relator by the Quantum Parties.

17. The Released Parties and Relator represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and in consultation

with legal counsel.

18. This Agreement shall be governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising under this Agreement will be the United States District Court for the Central District of California.

19. With the exception of the Separate Agreement between Relator and the Quantum Parties initially cited in Paragraph 4 above (which is not incorporated by reference), this Agreement and the Corporate Integrity Agreement, which is incorporated by reference, constitute the complete agreement between the Parties. This Agreement may be amended only by written consent of the Parties, except only the consent of the Quantum Parties and the HHS-OIG are needed for any amendment or modification of the Corporate Integrity Agreement.

20. The undersigned signatories of the Released Parties and Relator represent and warrant that they are authorized to execute this Agreement. The undersigned signatories of the United States and the States of New York and Oklahoma represent that they are signing this Agreement in their official capacity and that they are authorized to execute this Agreement.

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 shall be deemed executed and shall be effective on the date of signature of the last signatory to the

Agreement.

23. Subject to the Freedom of Information Act ("FOIA") procedures set forth in 45 C.F.R. Part 5 and 28 C.F.R. Part 16 and 32 C.F.R. Part 285 and 286, the United States shall make a reasonable effort to notify the Quantum Parties prior to any release by the United States of information submitted by the Quantum Parties and identified by the Quantum Parties as protected from public disclosure under FOIA rules, such as trade secrets, commercial, or financial information. Nothing in this Agreement shall be construed to prohibit the United States from providing to any department or agency of the United States or any State charged with enforcing the health care laws if the information relates to matters within the department's or agency's jurisdiction.

24. Subject to the Freedom of Information Law ("FOIL") procedures set forth in Chapter 47, Article 6 of the N.Y. Public Officers Law, et seq., and any other relevant New York laws regarding the release of confidential information submitted pursuant to an investigation, the State of New York shall make a reasonable effort to notify the Quantum Parties prior to any release by the State of New York of information submitted by the Quantum Parties and identified by the Quantum Parties as protected from disclosure under any such laws or rules. Nothing in this Agreement shall be construed to prohibit the State of New York from providing confidential information to any department or agency of the United States or any state charged with enforcing

the health care laws if the information relates to matters within the department's or agency's jurisdiction.

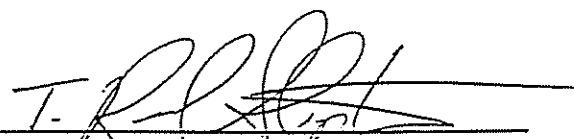
25. Oklahoma will comply with Oklahoma's Open Records Act, 51 Okla. Stat. § 24A.13 (1991), concerning the release of any information related to this agreement, which does not require any notice to Quantum Parties prior to release of information. Nothing in this agreement shall be construed to prohibit the State of Oklahoma from providing confidential information to any department or agency of the United States or any state charged with enforcing health care laws if the information relates to matters within the department's or agency's jurisdiction.

THE UNITED STATES OF AMERICA

DATED: _____

October 26, 1998

BY: _____


T. REED STEPHENS
Trial Attorney
Civil Division
United States Department of
Justice

DATED: October 23, 1998

BY: John P. Miller
JOHN P. MILLER
Special Assistant Attorney
General for Dennis C.
Vacco, Attorney General of
the State of New York

DATED: _____

BY: _____
TULLY McCOY
Assistant Attorney General
Office of the Attorney
General for the State of
Oklahoma

DATED: _____

BY: _____
LEWIS MORRIS
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: _____
ROBERT L. SHEPHERD
Deputy General Counsel
Tricare Management Activity
United States Department of
Defense

RELATOR

DATED: _____

BY: _____

JOHN P. MILLER
Special Assistant Attorney
General for Dennis C.
Vacco, Attorney General of
the State of New York

DATED: 10-23-98

BY: Tully McCoy

TULLY McCOY
Assistant Attorney General
Office of the Attorney
General for the State of
Oklahoma

DATED: _____

BY: _____

LEWIS MORRIS
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

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United States Department of
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JOHN P. MILLER
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BY: _____
TULLY McCOY
Assistant Attorney General
Office of the Attorney
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Oklahoma

DATED: 10/23/98

BY: *J. Morris*
LEWIS MORRIS
Assistant Inspector General
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Office of Counsel to the
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United States Department of
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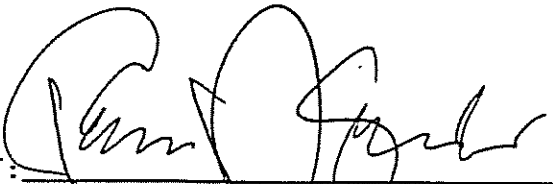
DATED: 10-26-98

BY: 

ROBERT L. SHEPHERD
Deputy General Counsel
Tricare Management Activity
United States Department of
Defense

RELATOR

DATED: 10/23/98

BY: 
THOMAS SCHAEFER, Esq.
For Relator Carol
Pellegrino

DATED: 10/23/98

BY: 
CAROL PELLEGRINO

RELEASED PARTIES

DATED: _____

BY: _____
WILLIAM P. COSTANTINI, Esq.
For Olsten Corporation and
Defendant Quantum Health
Resources, Inc.

DATED: _____

BY: _____
LYNN SHAPIRO SNYDER, Esq.
Epstein, Becker & Green
For Olsten Corporation and
Defendant Quantum Health
Resources, Inc.

DATED: _____

BY: _____

THOMAS SCHAEFER, Esq.
For Relator Carol
Pellegrino

DATED: _____

BY: _____

CAROL PELLEGRINO

RELEASED PARTIES

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BY: _____

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DATED: 10-26-98

BY: _____

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