

1 Peter M. Doyle,
Special Master
2 400 Capitol Mall, Suite 1100
Sacramento, CA 95814
3 Telephone: (916) 444-1125
4 Duly Appointed Special Master

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FEB - 7 2001

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, ex. rel.)
MARILOU MCKENZIE and ILA SWAN,)

12 Plaintiffs,)

14 v.)

15 CRESTWOOD HOSPITALS, INC., a)
California corporation; WEST COAST)
16 CAMBRIDGE, INC., a California)
corporation; INTEGRATED HEALTH)
17 SERVICES, INC., a Delaware corporation:)
SUNRISE HEALTH CARE)
18 CORPORATION, a New Mexico)
corporation,)

19 Defendants.)
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CASE NO. Civ. S-97-107 LKK/GGH

SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT

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I. PARTIES

This Settlement Agreement (Agreement) is entered into by and among the United States of America, acting through the United States Department of Justice; Crestwood Hospitals, Inc., a California corporation (Crestwood), and James M. Dobbins, Jr., an individual (Dobbins) (collectively the "Crestwood Defendants"); Crestwood Behavioral Health, Inc., a California corporation (CBHI); and Relators Ila Swan and Marilou McKenzie (collectively the "Relators"), through their authorized representatives. Hereafter, all individuals and entities named above shall collectively be referred to as "the Parties".

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Relators are individual residents of the State of California. On January 22, 1997,

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Relators filed under seal a Complaint, attached hereto as Attachment A, under the qui tam provisions of the False Claims Act, 31 U.S.C. §§ 3729, et seq. (FCA), against Crestwood, Sun Healthcare Group, Inc., a Delaware corporation, and Sunrise Healthcare Corporation, a New Mexico corporation, (collectively the "Sun Defendants"), and Integrated Health Services, Inc., a Delaware corporation, and West Coast Cambridge, Inc., a California corporation, (collectively the "IHS Defendants"), in the United States District Court for the Eastern District of California captioned United States of America ex rel. Marilou McKenzie and Ila Swan v. Crestwood Hospitals, Inc., et al., CIV-S-97-0107 LKK/GGH (the "Action"). On November 4, 1998, Relators filed an Amended Complaint, attached hereto as Attachment B, containing additional allegations regarding the facilities owned by Crestwood and naming Dobbins as a defendant. In

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June 1998, the United States declined to intervene in the Action and subsequently has not filed any motion to intervene for good cause. In October, 1999, and February, 2000, respectively, the Sun Defendants and the IHS Defendants declared bankruptcy.

B. The Crestwood Defendants, CBHI and Relators agree that at the time the Complaint was filed, Crestwood owned twenty-three skilled nursing or nursing facilities (the "Facilities") listed in Attachment C, consisting of 14 convalescent facilities (the "Convalescent Facilities") and 9 psychiatric facilities, some or all of which were operated from time to time by the IHS and Sun Defendants. Between January 1, 1994 and March 31, 1996, the IHS Defendants managed all of the Facilities under a management agreement with Crestwood. Between August 1, 1996 and March 31, 1997, the Sun Defendants managed the Convalescent Facilities under a management agreement with Crestwood. The Facilities are providers under the Medicare program, administered by the Health Care Financing Administration, and/or the Medi-Cal program. The Crestwood Defendants, CBHI and Relators agree that on April 1, 1997, Crestwood sold thirteen of the Convalescent Facilities to the Sun Defendants; it retained the Idylwood facility. The Crestwood Defendants, CBHI and Relators further agree that on January 1, 1998, CBHI, Crestwood's successor in interest, was formed, and on that date took over the ownership and operation of the psychiatric facilities, later acquired two additional psychiatric facilities (all collectively referred to as "the Psychiatric Facilities"), and, in January, 2000, took over ownership and operation of the Idylwood convalescent facility. Dobbins is the President and a shareholder of Crestwood and CBHI.

C. The Crestwood Defendants and CBHI deny any liability and all allegations of wrongdoing and the settlement provided for herein is not and shall not in any way be construed

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or deemed to be an admission or a concession of any fault, liability, fact or amount of damages, or any other matter whatsoever on the part of Crestwood, Dobbins or CBHI. The Crestwood Defendants and CBHI are entering into this Agreement solely to avoid the further expense and inconvenience of litigation and finally to put to rest all claims as set forth below.

D. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. The Settlement Amount. Subject to the provisions of Paragraph 10 below, the Crestwood Defendants and CBHI jointly and severally agree to pay to the United States \$1,206,896.50 (the Settlement Amount) by electronic funds transfer pursuant to written instructions to be provided by the United States, as follows: (a) the Crestwood Defendants and CBHI shall pay the United States \$477,505 within 5 business days after the later of the final execution of this Agreement by the Parties or the Court's approval and entry of the Joint Stipulation and Order of Dismissal in the form attached as Attachment D (the later of these two events being the Effective Date); (b) the Crestwood Defendants and CBHI shall pay the United States \$379,391.50 on or before December 15, 2001, with interest commencing on June 15, 2000, and compounding monthly at the rate of five percent per annum; and (c) the Crestwood Defendants and CBHI shall pay the United States \$350,000 in equal quarterly installments over a five (5) year period, with simple interest at the rate of five percent per annum, interest

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commencing June 15, 2000, and payments commencing within 5 business days of the Effective Date. The payments described in Paragraphs 1(b) and (c) shall be secured by an Irrevocable Standby Letter of Credit, or Irrevocable Standby Letters of Credit, issued in favor of the United States by a financial institution or institutions agreeable to both the United States and to the Crestwood Defendants and CBHI. In the event that such an arrangement is not mutually agreeable to the United States and to the Crestwood Defendants and CBHI, this Agreement and the settlement shall be null and void and without force or effect, and the Action shall continue.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of the Crestwood Defendants and CBHI set forth in this Agreement, and conditioned upon the Crestwood Defendants and CBHI's payment in full of the Settlement Amount, the United States hereby releases the Crestwood Defendants and CBHI, their past, present and future parent companies, subsidiaries, divisions, affiliates, predecessors, successors, limited and general partners and joint venturers, their present and former partners, principals, members, directors, officers, owners or agents, their lessors, and their managers and licensees (including the IHS Defendants during the time between January 1, 1994 and March 31, 1996, when the IHS Defendants managed the Convalescent Facilities under a management agreement with Crestwood, and the Sun Defendants, during the time between August 1, 1996 and March 31, 1997, when the Sun Defendants managed the Convalescent Facilities under a management agreement with Crestwood) (collectively, the "Crestwood Releasees"), from the claims asserted under the False Claims Act, 31 U.S.C. §§ 3729-3733, in the Complaint or the Amended Complaint in the Action. The United States will consent to the dismissal with prejudice of the Action pursuant to 31 U.S.C. § 3730(b). Notwithstanding any dismissal of the Action, or the

above release by the United States, the Crestwood Defendants and CBHI agree not to assert the dismissal or above release as a defense or bar to any future claims, if any, by the United States acting on its own behalf, against or involving the Psychiatric Facilities.

3. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of the United States' release in this Agreement as to any entity or person are any and all of the following:

- (1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (2) Any criminal liability;
- (3) Any liability to the United States (or its agencies) for any conduct other than that alleged in the Complaint or the Amended Complaint in the Action;
- (4) Any non-monetary administrative liability, including mandatory exclusion from Federal health care programs;
- (5) Any civil claims against individuals, including the individuals who comprise the Crestwood Releasees, who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Action;
- (6) Any claims based upon such obligations as are created by this Agreement;
- (7) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by the

Crestwood Defendants, except insofar as those claims are alleged in the Complaint or the Amended Complaint in the Action; and

(8) Any claims based on a failure to deliver items or services due except insofar as those claims are alleged in the Complaint or the Amended Complaint in the Action.

4. The Crestwood Defendants and CBHI waive and will not assert any defenses the Crestwood Defendants and CBHI may have to any criminal prosecution or administrative action relating to the Action, which defenses 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 Settlement bars a remedy sought in such criminal prosecution or administrative action.

5. Nothing in Paragraph 4 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.

6. Pursuant to 31 U.S.C. § 3730, the United States will pay to Relators a share of 29% of the Settlement Amount received by the United States pursuant to this Agreement (the Relators' share), within a reasonable time after the United States' receipt of payment from the Crestwood Defendants and CBHI as follows: (a) the United States shall pay Relator McKenzie \$25,000 and Relator Swan \$54,550, following receipt of the first payment by the Crestwood Defendants and CBHI as set forth in Paragraph 1(a) above; and (b) the United States shall pay Relator McKenzie \$85,000 and Relator Swan \$185,450, together with interest accruing since June 15, 2000 at 5% simple interest, in pro rata shares following the receipt of quarterly payments to be made by the Crestwood Defendants and CBHI over five years, as set forth in

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Paragraph 1(c) above. Relators will provide the United States with electronic funds transfer information to allow the Relators' share to be paid by electronic funds transfer. The United States shall not be obligated to pay Relators unless and until the United States receives payment from the Crestwood Defendants and CBHI. Should the United States receive less than the full Settlement Amount, the United States shall only be obligated to pay Relators their pro rata share of any such partial payment by the Crestwood Defendants and CBHI.

7. In exchange for the United States' payment to Relators of the Relators' share, Relators hereby release and discharge any and all claims Relators may have against the United States arising out of the Action, including claims pursuant to 31 U.S.C. § 3730(d) and § 3730(c).

8. Subject to the provisions of Paragraph 10, the Crestwood Defendants and CBHI jointly and severally agree to pay to Relators' attorneys \$1,168,103.50 for their expenses and attorneys' fees, plus \$25,000 for Relator Swan's costs, which sum will also be paid to Relators' attorneys. The Relators' attorneys shall disburse to Relator Swan the sum of \$25,000 for her costs. The Crestwood Defendants and CBHI shall pay this amount by electronic funds transfer to the Relators' attorneys, as follows: (a) \$25,000 for costs of Relator Swan within 5 business days of the Effective Date; (b) \$1,022,495 for attorneys' fees on January 4, 2001, or within 5 business days of the Effective Date, whichever is later; (c) \$145,608.50 for attorneys' fees on or before December 15, 2001, with interest commencing on June 15, 2000, and compounding monthly at the rate of five percent per annum.

9. The Crestwood Defendants and CBHI 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 Crestwood Defendants and

CBHI have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, based on the Action and the United States' investigation and prosecution thereof.

10. Concurrent with the execution of this Settlement Agreement, the Crestwood Defendants and Relators shall execute a Joint Stipulation of Dismissal (the Dismissal) in the form attached hereto as Attachment D to be submitted to the Court for its approval in accordance with the provisions of 31 U.S.C. § 3730(b)(1). The Crestwood Defendants and Relators will exert all best efforts to obtain Court approval and entry of the Dismissal, and the United States will consent to the dismissal of the Action pursuant to 31 U.S.C. § 3730(b). The Special Master approves, and recommends that the Court approve, this Agreement. In addition, the Special Master approves, and recommends that the Court approve and enter without modification, the Dismissal in the form agreed upon between the Crestwood Defendants and Relators and attached as Attachment D. In the event the Court does not approve this Agreement in the form which has been agreed upon, or does not enter the Dismissal in the form which has been agreed upon, this Agreement and the settlement shall be null and void and without force or effect and the Action shall continue.

11. In consideration of the mutual promises and obligations of this Agreement,

a. Relators, on behalf of themselves, their heirs, assigns, successors, trustees, executors, agents and representatives, and any and all persons natural, corporate or otherwise in privity with them or acting in concert with them or any of them, hereby and forever release, and will be deemed to have released, and covenant never again to sue or solicit or encourage anyone else to sue, Crestwood, Dobbins and CBHI, their past, present and future parent companies.

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subsidiaries, divisions, affiliates, predecessors, successors, limited and general partners and joint venturers, their present and former partners, principals, members, directors, officers, employees, stockholders, owners or agents, their lessors, and their managers and licensees (including, without limitation, in all such capacities, the IHS Defendants and the Sun Defendants, during the time any of those entities managed any of the Crestwood facilities under a management agreement), of and from any claim made or which could have been made during the course of the Action, or based upon, related to, or arising out of the acts or omissions referred to or allegations contained in the Complaint or the Amended Complaint in this Action, including, but not limited to, allegations of requests for Medicare and/or Medicaid reimbursement based upon the alleged falsification of ADL forms, minimum data sets, and/or any other medical or patient record at any skilled nursing facility, nursing facility or psychiatric hospital, including the Convalescent Facilities and the Psychiatric Facilities, owned and/or operated by Crestwood, CBHI, or any of their affiliates and/or joint venture partners (either by themselves or by the IHS Defendants or the Sun Defendants through a management contract) at any time. In addition, Relators covenant and agree that they will never again sue or solicit or encourage anyone else to sue the Crestwood Defendants, CBHI or any of the other persons or entities referred to in this Paragraph 11 under any federal or state qui tam or false claims statute based on any claim of any nature whatsoever; nor will they ever again sue or solicit or encourage anyone else to sue the Crestwood Defendants, CBHI or any of the other persons or entities referred to in this Paragraph 11 under any other federal or state statute or common law based on any claim that the Crestwood Defendants, CBHI, their employees or managers, or any other such persons or entities have falsified or after the date of this Agreement continued to falsify ADL forms, minimum data sets and/or any other medical

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or patient records at any of Crestwood's, CBHI's or their affiliates' facilities. Relators understand that by signing this Agreement and receiving its benefits they are permanently giving up any right they might otherwise have to pursue any such claims either now or in the future, and they are hereby giving up that right, unequivocally, irrevocably and without reservation.

Relators and the Crestwood Defendants agree that nothing in this Agreement shall be deemed or construed to affect the right of the Crestwood Defendants and/or CBHI to seek reimbursement, indemnity, or contribution from any person or entity not a party to this Agreement.

b. Relators, on behalf of themselves, their heirs, assigns, successors, trustees, executors, agents and representatives, and any and all persons natural, corporate or otherwise in privity with them or acting in concert with them or any of them, hereby and forever release, acquit and discharge Crestwood, Dobbins and CBHI, and their past, present and future parent companies, subsidiaries, divisions, affiliates, predecessors, successors, limited and general partners and joint venturers; their present and former partners, principals, members, directors, officers, employees, stockholders, owners or agents (including, without limitation, in all such capacities, Bryan Burr, George Lytal, Mary Lou Glantz, Lori Blackburn); their managers and licensees (including, without limitation, the IHS Defendants and the Sun Defendants during the time any of those entities managed any of the Crestwood facilities under a management agreement, but excluding the Sun Defendants after April 1, 1997, and excluding the IHS and Sun Defendants with respect to claims made against them in the state court action entitled *Swan v. Sun Healthcare Group, Inc., et al.*, Case No. 99A05347, pending in Sacramento Superior Court (the State Court Action)); the real estate partnerships which held title to the real estate and improvements on which the Facilities were or are located (including, without limitation, their

past, present and future general and limited partners, predecessors, successors, employees and agents); their insurers, servants, attorneys, and any entity or person identified in any discovery conducted or proposed in writing (including without limitation, any such individual's heirs, assigns, successors, trustees, executors, agents and representatives, and any such entity's past, present and future parent companies, subsidiaries, divisions, affiliates, predecessors, successors, limited and general partners, joint venturers, present and former partners, principals, members, directors, officers, employees, stockholders, owners, or agents); the heirs, executors, administrators, attorneys, servants, agents and/or representatives of any of the foregoing individuals or entities; and any and all persons natural, corporate or otherwise in privity with any of the foregoing individuals and/or entities or anyone acting in concert with them or any of them (collectively, the Released Parties), from any claims known or unknown, suspected or unsuspected, contingent or non-contingent, arising under federal statute (including but not limited to the Federal False Claims Act), state statute (including but not limited to the California False Claims Act, or the California unfair business practices laws) or common law, that are based in any way upon acts, omissions, events or transactions occurring at any time prior to the date of execution of this Agreement up to the date of execution of this Agreement, or are based on any claims made by Relators or their counsel during the course of this Action or on any discovery commenced or proposed or investigation conducted during the course of this Action, whether or not specifically referred to in the Complaint or Amended Complaint (collectively, the Released Claims). Relators and the Crestwood Defendants agree that nothing in this Agreement shall be deemed or construed to affect the right of the Crestwood Defendants and/or CBHI to seek

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reimbursement, indemnity, or contribution from any person or entity not a party to this Agreement.

c. In consideration of the payments being made by the Crestwood Defendants and CBHI under Paragraph 8 above, Relators' counsel hereby and forever release the Released Parties from any and all of the Released Claims, including, without limitation, any and all claims pursuant to 30 U.S.C. § 3730 for attorney' fees, expenses and costs, the claims referred to in subparagraph (b) of this Paragraph 11, or based on or similar to any of the claims made, asserted or threatened during the course of this Action. Relators and the Crestwood Defendants agree that nothing in this Agreement shall be deemed or construed to affect the right of the Crestwood Defendants and/or CBHI to seek reimbursement, indemnity, or contribution from any person or entity not a party to this Agreement.

d. In consideration of the dismissal and the releases being provided by the Relators, the Crestwood Defendants and CBHI hereby and forever release, acquit and discharge the Relators, their counsel and agents from any claims known or unknown, suspected or unsuspected, contingent or non-contingent arising under federal statute, state statute, including but not limited to the California False Claims Act, or common law, that are based in any way upon acts, omissions, events or transactions occurring at any time prior to the date of execution of this Agreement up to the date of execution of this Agreement, or based on any claims made during the course of this Action.

e. Relators, their counsel, the Crestwood Defendants and CBHI acknowledge and agree that the release set forth in this Paragraph 11 is a general release. Relators, their counsel, the Crestwood Defendants and CBHI expressly waive and assume the risk of any and all

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claims for damages that exist as of and prior to the date of this Agreement, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect their decision to enter into this Agreement.

f. Relators, their counsel, the Crestwood Defendants and CBHI hereby expressly waive and relinquish any and all rights and benefits that he, she, they or it may have under California Civil Code Section 1542 or any other applicable state statute of similar or comparable substance. California Civil Code Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Relators and their counsel expressly understand and agree that, upon the dismissal with prejudice of the Action by the Court, no suit may be brought, nor may any claim or demand be asserted, based on any of the acts or events or any of the claims released hereunder, unless the Crestwood Defendants and/or CBHI breach the payment provisions of this Agreement.

g. The parties acknowledge that excepted from this Agreement, and from any and all warranties, covenants, representations and/or releases that might otherwise exist in this Agreement, are (i) claims against the Sun Defendants and/or the IHS Defendants, and their successors and/or assigns, for actions and conduct arising out of any facilities other than those owned and/or operated at any time by Crestwood, CBHI, or any of their predecessors, managers, agents, affiliates or partners; (ii) claims against the Sun Defendants, and their successors and/or assigns, for actions and conduct arising after April 1, 1997; and (iii) claims against the IHS

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Defendants and their successors and/or assigns, and the Sun Defendants and their successors and/or assigns, made against them in the State Court Action referred to in Paragraph 11 b. above.

12. Relators agree that this Settlement between the United States, the Crestwood Defendants and CBHI in connection with the Action is fair, adequate, and reasonable under all the circumstances pursuant to 31 U.S.C. § 3730(c)(2)(B).

13. Representations and Warranties by the Relators and their Counsel. The Relators represent and warrant to the Crestwood Defendants and CBHI as of the date of this Agreement, with knowledge that the Crestwood Defendants and CBHI are relying thereon, as follows:

a. The Relators have not assigned, transferred or conveyed, in whole or in part, any of their rights, title or interests in any and all claims which are released or intended to be released, to any person or entity.

b. The Relators and their counsel represent that they have not asserted nor do they have any present intention to assert claims in any forum, administrative, judicial or otherwise, against Crestwood, CBHI, Dobbins or any of their affiliates, officers, directors, employees, agents or joint venturers, with respect to any matter or claim referred to in the Action or released under Paragraph 11, above. In addition, Relators represent that they are not aware of any person or entity that has asserted or has any present intention to assert any such claims.

c. The Relators and their counsel represent that they are not and will not solicit, engage or assist any third-party in asserting claims in any forum, administrative, judicial or otherwise, against Crestwood, CBHI, Dobbins or any of their affiliates, officers, directors,

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employees, agents or joint venturers, with respect to any matter or claim referred to in the Action or released under Paragraph 11, above.

14. Representations and Warranties by the Crestwood Defendants and CBHI. The Crestwood Defendants and CBHI represent and warrant to the Relators as of the date of this Agreement, with knowledge that the Relators are relying thereon, as follows:

a. Crestwood and CBHI have been duly incorporated and are validly existing and in good standing as corporations under the laws of the State of California as of the date of this Agreement and this Agreement is duly executed by Crestwood and CBHI.

b. Crestwood, Dobbins and CBHI have all requisite power and authority to execute, deliver and perform their obligations under this Agreement, including the compromise and release of claims, and executing this Agreement and undertaking the obligations contained herein is consistent with all duties of Crestwood, Dobbins and CBHI.

15. The Settlement Amount that the Crestwood Defendants and CBHI must pay by electronic funds transfer pursuant to Paragraph 1 above, will not be decreased as a result of the denial of claims for payment withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Action; and the Crestwood Defendants and CBHI agree not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Action, and agree not to appeal any such denials of claims.

16. The Crestwood Defendants and CBHI agree that all costs (as defined in the Federal Acquisition Regulations (FAR) § 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 Crestwood Defendants or CBHI, in connection with:

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(1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) the Crestwood Defendants' and CBHI's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees), (4) the negotiation of this Agreement, and (5) the payments made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employees Health Benefits Program (FEHBP) (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by the Crestwood Defendants and CBHI, and the Crestwood Defendants and CBHI will 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 Crestwood Defendants and CBHI or any of their subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

The Crestwood Defendants and CBHI further agree that within 60 days of the effective date of this Agreement, they will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph 16) 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 Crestwood Defendants and CBHI or any of their subsidiaries, and will request, and agree,

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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 Crestwood Defendants and CBHI agree that the United States will be entitled to recoup from the Crestwood Defendants any overpayment 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 Crestwood Defendants and CBHI or any of their subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph 16) on the Crestwood Defendants and CBHI's, or any of their subsidiaries', cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph 16.

17. The Parties do not release any claims against any other person or entity except as specified herein.

18. The Crestwood Defendants agree that they will not seek payment for any of the health care billings described in the Action from any health care beneficiaries or their parents or sponsors. The Crestwood Defendants waive any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment described in the Action.

19. Except as provided in Paragraph 8, each Party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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20. Notice. Any notice required by this Agreement shall be deemed delivered if sent by overnight delivery service or by facsimile as follows:

If to Crestwood, CBHI or Dobbins:

James Severson, Esq.
Frank Kennamer, Esq.
McCutchen, Doyle, Brown & Enersen, LLP
Three Embarcadero Center
San Francisco, California 94111
Telephone: (415) 393-2000
Facsimile: (415) 393-2286

If to the Relators:

Ronald Packard, Esq.
Von Packard, Esq.
Packard, Packard, & Johnson
Four Main Street, Suite 200
Los Altos, California 94022
Telephone: (650) 947-7300
Facsimile: (650) 947-7301

and to:

Ila Swan
552 Redwood Drive
Vacaville, CA 95687

Marilou McKenzie
70 De Luz Ct.
Vacaville, CA 95687

If to the United States Government:

Michael F. Hertz, Esq.
U.S. Department of Justice
P.O. Box 261
Ben Franklin Station
Washington, DC 20530
Telephone: (202) 514-7179
Facsimile: (202) 616-3085

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Any Party may change the address for notice by providing notice to the other Parties as set forth above.

21. The Relators, the United States, the Crestwood Defendants and CBHI represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. The Parties acknowledge that this Agreement effects a settlement of disputed matters.

23. The Parties agree that the United States may disclose this Agreement and information about this Agreement to the public.

24. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of California.

25. This Agreement constitutes the complete agreement between the Parties. It supersedes all prior agreements and/or understandings. This Agreement may not be amended except by written consent of the Parties. Each Party to this Agreement acknowledges, warrants and represents that other than as expressly stated in this Agreement, no other Party, agent or attorney for any other Party, and no other person or entity, has made any promises, representations or warranties to induce that Party to enter into this Agreement, nor has any Party relied on any such promise, representation or warranty not expressly stated herein.

26. The undersigned individuals signing this Agreement on behalf of the Crestwood Defendants and CBHI represent and warrant that they are authorized by the Crestwood

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Defendants and CBHI to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

27. This Agreement may be executed in counterparts and/or facsimile form, each of which constitutes an original and all of which constitute one and the same agreement.

28. This Agreement is binding on all successors, heirs, assigns, and transferees of the Parties.

29. Destruction of Documents. Within fifteen (15) days after the later of the initial cash payment described in Paragraph 1 or the payments described in Paragraphs 8(a) and 8(b), Relators, Relators' counsel and their agents, including without limitation Dr. Kathryn Locatell, the firm of Bauman and Rasor, Robert Bauman and Dina Rasor, will assemble for review by the Special Master at the law offices of Packard, Packard & Johnson, all documents (including all copies thereof, and all electronic, magnetic or other media) that comprise, include, refer to or contain (1) confidential information as defined in the Protective Order entered in the Action that were produced by the Crestwood Defendants, the IHS Defendants and/or the Sun Defendants (except for documents relating to allegations against the Sun Defendants after April 1, 1997), (2) the work-product of Relators' counsel and agents that includes or is derived from confidential information as defined in the Protective Order entered in the action, (3) information relating to the Fisher matter, including the Fisher bankruptcy, and/or the Hazzard matter, referred to by Relators' counsel during the Action, (4) information relating to the assets or background of Dobbins and/or any other officer, director or employee of Crestwood or CBHI, and/or (5) information relating in any way to Crestwood, CBHI, Dobbins and/or any other officer, director

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or employee of Crestwood or CBHI (all collectively, the "Documents For Destruction").

Notwithstanding the foregoing, Relators' counsel may retain their correspondence files, pleadings files, Confidential Disclosure Statement, transcripts of the depositions of Ila Swan and Marilou McKlenzie and notes that reflect deposition preparation, the "approved persons" list for access to the document depository, the Matrix of Undisputed Facts, and such other matters as the Special Master may deem necessary for Relators' counsel to retain to demonstrate the competence of their services in the Action. With regard to any Documents For Destruction stored by electronic, magnetic or other media, Relators, Relators' counsel and their agents will print out a copy of each such document for review by the Special Master, and, after having done so, will permanently delete all such records from all computer storage drives, data bases, discs and/or tapes. Relators and their counsel and agents will certify under penalty of perjury that all Documents For Destruction have been assembled for review by the Special Master, and that all such electronically-stored records have been permanently deleted. The Special Master shall supervise the shredding of all Documents For Destruction at the law offices of Packard Packard & Johnson; provided that Relators' counsel may choose to return to counsel for the Crestwood Defendants any or all Documents For Destruction. The cost for the Special Master's review and supervision, and for the shredder to be used, shall be borne by Crestwood. Except as expressly modified by this paragraph, the Protective Order shall continue in full force and effect. In exchange for a dismissal with prejudice as to the Crestwood Defendants of the State Court Action referred to above, the undersigned counsel for the Crestwood Defendants agree to return all copies of any medical/psychiatric records and reports of or regarding Relator Swan in counsel's and/or their agents' possession, to identify to whom, if anyone, such records were

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disseminated and to certify under penalty of perjury all such records and reports have been returned. No such records are or have been in the possession of the Crestwood Defendants, CBHI or any of their affiliates, officers, directors, agents or employees. The records will be returned concurrently with the filing of said dismissal of the State Court Action. Failure by the Crestwood Defendants, CBHI, their counsel or agents, or Relators, their counsel or agents to comply with these provisions, or any violation thereof by the Crestwood Defendants, CBHI, their counsel or agents, or Relators, their counsel or agents, is subject to an enforcement motion before the Court, including an award of attorneys' fees to the prevailing party.

30. The Crestwood Defendants, CBHI, and the Relators and their counsel, consultants and experts agree to certain confidentiality provisions to which the United States is not a party. These confidentiality provisions shall be contained in a separate agreement that shall be executed concurrently with this Agreement. In the event any person required to execute these confidentiality provisions fails or refuses to do so, this Agreement and the settlement shall be null and void and without force or effect, and the Action shall continue.

31. Severability. If, after the Effective Date of this Agreement, any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and enforceable.

RDD JS
MM

For the United States of America:

DAVID W. OGDEN
Assistant Attorney General, Civil Division

PAUL L. SEAVE
United States Attorney
Eastern District of California

Dated: _____

By: _____
ROBERT TWISS
Assistant U.S. Attorney

Dated: _____

By: _____
POLLY A. DAMMANN
Assistant Director,
LAURIE A. OBEREMBT
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice

For Relators:

Dated: 12/22/00

By: *ILA Swan*
ILA SWAN

Dated: ~~12-22~~

By: *Mariou McKenzie*
MARILOU MCKENZIE

PACKARD, PACKARD & JOHNSON
Ronald D. Packard, Esq.
Von G. Packard, Esq.
Attorneys for Relators

Dated: _____

By: *R.D. Packard*
Ronald D. Packard, Esq.

RS
R.D.P.
M

For Crestwood Defendants and CBHI:

CRESTWOOD HOSPITALS, INC., Defendant

Dated: _____

By: _____
James M. Dobbins, Jr.
President

Dated: _____

CRESTWOOD BEHAVIORAL HEALTH, INC.

By: _____
James M. Dobbins, Jr.
President

Dated: _____

James M. Dobbins, Jr.

Dated: _____

MCCUTCHEN, DOYLE, BROWN & ENERSEN
James Severson, Esq.
Frank Kennamer, Esq.
Attorneys for Crestwood
Defendants and CBHI

By: _____
James Severson, Esq.

APPROVED AND RECOMMENDED BY THE SPECIAL MASTER:

Dated: _____

By: _____
Peter M. Doyle, Esq.
Special Master

JS
RO3

For the United States of America:

DAVID W. OGDEN
Assistant Attorney General, Civil Division

PAUL L. SEAVE
United States Attorney
Eastern District of California

Dated: _____

By: _____
ROBERT TWISS
Assistant U.S. Attorney

Dated: 1/12/01

By: Laurie A. Oberembt
POLLY A. DAMMANN
Assistant Director,
LAURIE A. OBEREMBT
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice

For Relators:

Dated: 12/22/00

By: ILA Swan
ILA SWAN

Dated: 12-22

By: MariLou Mckenzie
MARILOU MCKENZIE

PACKARD, PACKARD & JOHNSON
Ronald D. Packard, Esq.
Von G. Packard, Esq.
Attorneys for Relators

Dated: _____

By: R.D. Packard
Ronald D. Packard, Esq.

Handwritten initials: J.S., R.D., M.

For the United States of America:

DAVID W. OGDEN
Assistant Attorney General, Civil Division

PAUL L. SEAVE
United States Attorney
Eastern District of California

Dated: 1/16/2001

By: Robert M Twiss
ROBERT TWISS
Assistant U.S. Attorney

Dated: 1/12/01

By: Laurie A. Oberembt
POLLY A. DAMMANN
Assistant Director,
LAURIE A. OBEREMBT
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice

For Relators:

Dated: 12/22/00

By: Ila Swan
ILA SWAN

Dated: 12-22

By: MariLou McKenzie
MARILOU MCKENZIE

PACKARD, PACKARD & JOHNSON
Ronald D. Packard, Esq.
Von G. Packard, Esq.
Attorneys for Relators

Dated: _____

By: R.D. Packard
Ronald D. Packard, Esq.

For Crestwood Defendants and CBHI:

CRESTWOOD HOSPITALS, INC., Defendant

Dated: 12/22/00

By: James M. Dobbins, Jr.
James M. Dobbins, Jr.
President

Dated: 12/22/00

CRESTWOOD BEHAVIORAL HEALTH, INC.

By: James M. Dobbins, Jr.
James M. Dobbins, Jr.
President *Chairman CEO* *Peter M. Doyle*
correction

Dated: 12/22/00

James M. Dobbins, Jr.
James M. Dobbins, Jr.

Dated: 12/22/00

MCCUTCHEN, DOYLE, BROWN & ENERSEN
James Severson, Esq.
Frank Kennamer, Esq.
Attorneys for Crestwood
Defendants and CBHI

By: James Severson, Esq.
James Severson, Esq.

APPROVED AND RECOMMENDED BY THE SPECIAL MASTER:

PETER M. DOYLE
400 Capitol Mall, 11th Flr.
Sacramento, CA 95814

Dated: _____

By: _____
Peter M. Doyle, Esq.
Special Master