

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS), the Office of Acquisition Management and Policy, and the National Institutes of Health (NIH) of the Department of Health and Human Services (HHS) (collectively the "United States"); the Mayo Foundation (Mayo); and Christine Long (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

- A. Mayo is a not-for-profit organization based in Rochester, Minnesota. Mayo conducts medical research and provides medical care to patients.
- B. Christine Long (the "Relator") is an individual resident of the State of South Dakota. On March 1, 2002, the Relator filed a qui tam action in the United States District Court for District of Minnesota captioned United States ex rel. Long v. Mayo Foundation, CV02-522 ADM/SRN (hereinafter "the Civil Action."). From May 2001 to April 2002, Long was an accounting associate in Mayo's Research Accounting Department.
- C. The United States contends that Mayo submitted or caused to be submitted claims for payment to the United States under grants received from and contracts with the United States. The United States contends that it has certain civil claims, as specified in Paragraph 2 below, against Mayo for engaging in the following conduct during the period from January 1, 1992 to November 6, 2003:

Mayo made claims to the United States on federal grants and contracts that were improper because the claims included costs that were improperly manually transferred to the grants and contracts from other accounts (federal and non-federal), grants, contract, or cost centers. These transfers were improper because (1) the costs were not allocable to the grants or contracts, (2) the transfers were not properly documented, or (3) the transfers were not made timely. In addition, the claims were improper because Mayo had an accounting system that could not monitor and manage charges made to federal grant awards in the manner required by federal law.

(hereinafter referred to as the "Covered Conduct").

D. The United States also contends that it has certain administrative claims, as specified in Paragraph 4 below, against Mayo for engaging in the Covered Conduct.

E. This Agreement is neither an admission of liability by Mayo nor a concession by the United States that its claims are not well founded. Mayo denies any wrongdoing or liability for the conduct alleged herein.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Mayo agrees to pay to the United States \$6,500,000 (the "Settlement Amount"). The United States agrees to pay \$1,300,000 of the Settlement Amount to the Relator ("Relator Share Amount"). The foregoing payments shall be made as follows:

a. Mayo agrees to pay the full Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Minnesota. Mayo agrees to make this electronic funds transfer no later than five business days following the Effective Date of this Agreement.

b. Contingent upon the United States receiving the Settlement Amount from Mayo and as soon as feasible after receipt, the United States agrees to pay the Relator Share Amount to the Relator by electronic funds transfer.

2. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Mayo in this Agreement, and conditioned upon Mayo's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Mayo, together with its current and former parent corporations, each of its direct and indirect subsidiaries, brother or sister corporations, divisions, affiliates, and current or former officers, directors, agents, servants, and employees, and the successors and assigns of any of them (the "Released Entities") from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract, fraud, conversion, disgorgement, restitution, money had and received, recoupment, or constructive trust.

3. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Mayo in this Agreement, and conditioned upon Mayo's full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release the Released Entities from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

4. In consideration of the obligations of Mayo in this Agreement and conditioned upon Mayo's full payment of the Settlement Amount, NIH agrees to release and refrain from instituting, directing, or maintaining any fiscal disallowance action to administratively recover funds paid to Mayo

based on the Covered Conduct. Nothing in this Agreement precludes NIH from imposing corrective actions or special award conditions on a grant, pursuant to 42 C.F.R. §52.9 or 45 C.F.R. §74.14, or imposing additional or special contract terms. Nothing in this Agreement precludes NIH from taking enforcement actions pursuant to 45 C.F.R. §74.62, including, but not limited to, limiting future grant awards. Nothing in this Agreement precludes NIH from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5 below.

5. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Mayo, the Released Entities, and the Relator) are the following claims of the United States:

- a. Any civil, criminal, or administrative 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;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct, including liability for claims based on costs charged to federal grants and contracts not through a cost transfer;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due; and
- h. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Mayo) who receive written notification that

they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct.

6. Conditioned upon receipt of the Relator's Share Amount, the Relator, for herself individually, and for her heirs, successors, agents and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1), from any claims arising from the filing of the Civil Action, and from any other claims for a share of the Settlement Amount, and in full settlement of any claims the Relator may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

7. The Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, agrees to release the Released Entities, and their officers, agents, and employees, from any liability to the Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs. Mayo agrees to release the Relator and her agents and attorneys from any liability related to any copying and removal by the Relator of documents while employed by Mayo. The Relator agrees to return all such documents and copies thereof in her possession (including any in her attorneys' possession) no later than five business days following the Effective Date of this Agreement.

8. Mayo waives and will not assert any defenses Mayo 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. Mayo agrees that this Agreement is not punitive in purpose or effect. 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.

9. Mayo fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Mayo or the Released Entities have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by NIH or any other government agency, related to the Covered Conduct; and Mayo shall not resubmit to NIH or any other government agency, any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

11. Mayo agrees to the following:

a. Unallowable Costs Defined: that 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. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Mayo, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government

grants, government contracts, and government cooperative agreements and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (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) Mayo's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),
- (4) the negotiation and performance of this Agreement, and
- (5) the payment Mayo makes to the United States pursuant to this Agreement and any payments that Mayo may make to the Relator, including costs and attorneys fees.

(All costs described or set forth in this Paragraph 11.a. are hereafter, "unallowable costs.")

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for in nonreimbursable cost centers by Mayo, and Mayo shall not charge such unallowable costs directly or indirectly to any grants, contracts, or cooperative agreements with the United States, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Mayo or any of its subsidiaries or affiliates to any government agency, including the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Mayo further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable

government agencies; Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors; and Medicaid, VA 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 Mayo or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Mayo agrees that the United States, at a minimum, shall be entitled to recoup from Mayo 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 Mayo or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Mayo or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Mayo's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

12. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraphs 2, 3, 6, 7, and 9 above.

13. Mayo warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following its payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Mayo, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Mayo was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

14. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Mayo represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

16. The Relator represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

17. 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 District of Minnesota.

8. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

9. Upon receipt of the payments described in Paragraph 1.a and c above, the United States Relator shall promptly sign and file in the Civil Action a Notice of Intervention and Joint Motion for Dismissal. The dismissal shall be with prejudice as to the claims of the Relator and as to the United States for the Covered Conduct. The dismissal with respect to other claims of the United States shall be without prejudice.

10. The individuals signing this Agreement on behalf of Mayo represent and warrant that they are authorized by Mayo to execute this Agreement. The individuals signing this Agreement on behalf of the Relator represent and warrant that they are authorized by the Relator to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacity and that they are authorized to execute this Agreement.

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


12. This Agreement is binding on Mayo's successors, transferees, heirs, and assigns.

13. The Relator consents to the United States' disclosure of this Agreement, and the existence of this Agreement, to the public.


14. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: May 24, 2005

BY: 
ROBYN A. MILLENACKER
Assistant United States Attorney
District of Minnesota

DATED: 5-18-05

BY: 
KEITH E. DOBBINS
JOEL D. HESCH
Trial Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

5/12/05

BY: Lewis Morris

LEWIS MORRIS
Chief Counsel to the Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

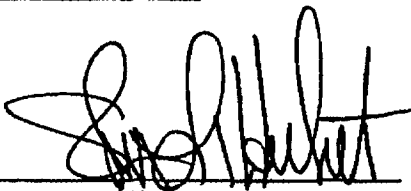
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BY: Marc R Weisman

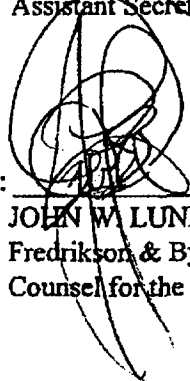
MARC WEISMAN
Director, Office of Acquisition Management and Policy
United States Department of Health and Human Services

MAYO - DEFENDANT

DATED: 5/23/05

BY: 
SHERRY L. HUBERT
Assistant Secretary, Mayo Foundation

DATED: 5/23/05

BY: 
JOHN W. LUNDQUIST
Fredrikson & Byron, P.A.
Counsel for the Mayo Foundation

CHRISTINE LONG - RELATOR

DATED: 5-21-05

BY: Christine Long
CHRISTINE LONG

DATED: _____

BY: _____
PHILLIP E. BENSON
DONALD R. WARREN
Warren - Benson Law Group
Counsel for Christine Long

DATED: _____

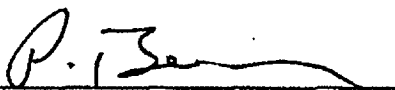
BY: _____
GARY A. WEISSMAN
Gary A. Weissman Law Office
Counsel for Christine Long

CHRISTINE LONG - RELATOR

DATED: _____

BY: _____
CHRISTINE LONG

DATED: 5/20/05

BY: 
PHILLIP E. BENSON
DONALD R. WARREN
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