

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS); the Defense Health Agency (DHA), acting on behalf of the TRICARE Program; the Office of Personnel Management (OPM), which administers the Federal Employees Health Benefits Program (FEHBP); and the United States Department of Veterans Affairs (VA) (collectively, the “United States”), Advanced Bionics LLC (“AB”), and David Nyberg (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Advanced Bionics LLC, whose principal place of business is in Valencia, California, provides various healthcare goods and services, including manufacturing and selling cochlear implant systems.

B. On July 30, 2019, Relator filed a *qui tam* action in the United States District Court for the Eastern District of Pennsylvania captioned United States et al. ex rel. Nyberg v. Advanced Bionics Corp., et al., Dkt. No. 2:19-cv-3439, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). That complaint was subsequently amended on November 17, 2022.

C. The United States contends that AB submitted or caused to be submitted claims for payment to: the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”); the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”); the FEHBP, 5 U.S.C. §§ 8901-8914; the Children’s Health Insurance Program, 42 U.S.C. §§ 1397aa et seq.; and the

Department of Veterans Affairs; 38 U.S.C. Chapter 17 (hereafter the “Federal health care programs”).

D. The United States alleges that from January 2011 through December 2019, as a result of the conduct described below, AB knowingly submitted, or caused to be submitted, false or fraudulent claims to the Federal healthcare programs for AB’s cochlear implant systems using Neptune and Naida sound processors. In connection with AB’s submission of Premarket Approval Applications (PMAs) to the FDA for its Neptune and Naida sound processor components of its cochlear implant systems, AB represented that these processors satisfied an internationally-recognized standard for radio frequency (RF) emissions. These RF standards attempt to limit the extent to which devices like cochlear implant systems interfere with other devices that use the RF spectrum, including but not limited to telephones, alarm and security systems, televisions and radios, which interference FDA recognizes can occur with cochlear implant systems. In fact, however, the United States alleges that AB did not comply with the emissions standard it purported to satisfy. Specifically, AB did not adequately disclose to the FDA that it failed to test the Neptune and Naida sound processors using “worst case” configurations and that it shielded certain emissions-generating system components during emissions testing, methods that the United States alleges were improper under the standard. AB’s actions were designed to induce the FDA’s decision to approve the PMAs for Neptune and Naida sound processors, which permitted the Federal health care programs to reimburse for AB’s cochlear implant systems. The United States alleges that claims to the Federal health care programs for AB’s Neptune and Naida cochlear implant systems were false, regardless of whether or not there were safety issues with the Neptune and Naida systems due to the RF emissions testing methods referenced above. This conduct is referred to below as the “Covered Conduct.”

E. AB has entered into or will be entering into one or more separate settlement agreements (hereinafter referred to as the “Medicaid State Settlement Agreement”) with certain states (the “Medicaid Participating States”) in settlement of the conduct described in the Medicaid State Settlement Agreement, and will pay to the Medicaid Participating States in connection with the agreement the sum of One Million Two Hundred Thirty Eight Thousand Five Hundred Eighty Dollars (\$1,238,580.00) (the “Medicaid State Settlement Amount”).

F. AB denies the allegations of the United States in Preamble Paragraph D above.

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

H. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. AB shall pay to the United States ELEVEN MILLION THREE HUNDRED SIXTY ONE THOUSAND FOUR HUNDRED TWENTY DOLLARS (\$11,361,420.00) (Settlement Amount), of which \$5,680,710 is restitution, plus interest on the Settlement Amount at a rate of 1.5% per annum from March 2, 2022, no later than 14 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of Pennsylvania.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay to Relator 16.5% of the Settlement Amount

(\$1,874,634.30), plus interest as stated above, by electronic funds transfer (Relator's Share) pursuant to instructions to be provided by Relator's counsel.

3. AB and Relator are entering into a separate agreement, pursuant to 31 U.S.C. § 3730(d), involving the payment by AB of Relator's expenses, attorneys' fees, and costs arising from the filing of the Civil Action.

4. Subject to the exceptions in Paragraph 9 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases AB, together with its current and former direct and indirect parent corporations and limited liability companies ("Parents"); its and their affiliates, direct and indirect subsidiaries, brother or sister corporations, and divisions; and its and their current and former corporate owners; and the predecessors, successors, transferees and assigns of any of them (collectively, the "AB Corporate Released Parties") from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; any statutory provision creating a cause of action for civil damages or civil penalties which the Civil Division of the Department of Justice has actual or present authority to assert and compromise under 28 C.F.R. Pt. 0, Subpart I, 0.45(d); or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 9 below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1 and the Relator's receipt of the payment referenced in Paragraph 3 above, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases acquits, waives, and forever discharges the AB Corporate Released Parties together with other legal entities directly or indirectly controlled by any of the AB Corporate Released Parties, together with their current and former officers, directors,

employees, agents, and attorneys; and the predecessors, successors, transferees, and assigns of any of them (collectively, the “AB Released Parties”) from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 and from any and all claims for relief, actions, rights, causes of actions, suits, debts, obligations, liabilities, demands, losses, damages (including treble damages and any civil penalties), punitive damages, costs and expenses of any kind, character, or nature whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal or state statute or regulation, or in common law, that Relator otherwise would have standing to bring, including but not limited to, Relator’s claims pursuant to 31 U.S.C. § 3730(d)(1) for attorneys’ fees and costs and any other liability to Relator arising from or relating to the claims Relator asserted or could have asserted in the Civil Action. Relator acknowledges that he may discover facts or law different from, or in addition to, the facts or law that he knows or believes to be true with respect to the claims released in this Agreement and agrees nonetheless, that this Agreement and the release contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery of them. Relator expressly acknowledges and agrees that he has the right not to waive claims that are unknown at the time that this Agreement is executed but, nevertheless, Relator waives such claims and his rights under Section 1542 of the California Civil Code and any comparable provisions of other states’ and federal law concerning release of unknown claims are expressly waived by Relator. Section 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

6. In consideration of the obligations of AB set forth in this Agreement and the Corporate Integrity Agreement (CIA) entered into between OIG-HHS and AB, and upon the United States' receipt of full payment of the Settlement Amount plus applicable interest due under Paragraph 1, the OIG-HHS shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against AB under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this paragraph and in Paragraph 9 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude AB from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9, below.

7. In consideration of the obligations of AB set forth in this Agreement, and upon the United States' receipt of full payment of the Settlement Amount plus applicable interest due under Paragraph 1, DHA shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against AB under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in this paragraph and in Paragraph 9 (concerning reserved claims), below. DHA expressly reserves authority to exclude AB from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii) (mandatory exclusion), based upon the Covered Conduct. Nothing in this paragraph precludes DHA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9, below.

8. In consideration of the obligations of AB in this Agreement, and upon the United States' receipt of full payment of the Settlement Amount plus applicable interest due under Paragraph 1, OPM shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the FEHBP against AB under 5 U.S.C. § 8902a or 5 C.F.R. Part 890 Subpart J or Part 919 for the Covered Conduct, except as reserved in this paragraph and in Paragraph 9 (concerning reserved claims), below, and except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). OPM expressly reserves all rights to comply with any statutory obligation to debar AB from the FEHBP under 5 U.S.C. § 8902a(b) (mandatory exclusion) based upon the Covered Conduct. Nothing in this paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9, below.

9. Notwithstanding the releases given in Paragraphs 4, 6-8 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory exclusion from Federal health care programs;
- d. Any liability for a claim brought by any federal agency other than the Department of Justice, HHS, OIG-HHS, DHA, OPM, or VA.
- e. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability based upon obligations created by this Agreement;

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

10. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

11. AB waives and shall not assert any defenses AB 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.

12. AB fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that AB has asserted, could have asserted, or may assert

in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

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

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

15. In the event that AB fails to pay the full Settlement Amount within ten (10) days of the date that it is due according to Paragraph 1 of this Agreement, AB shall be in default of its payment obligations (hereinafter "Default"). The United States will provide a written Notice of Default, and AB shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Matthew O'Connor, Esq. or to such other attorney for AB that the latter shall designate in writing. If AB fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable,

and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, AB agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against AB for the claims that would otherwise be covered by the releases provided in Paragraph 4 and 6-8 above, with any recovery reduced by the amount of any payments previously made by AB to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to AB and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, AB agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, AB waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against AB within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on July 30, 2019. AB agrees not to contest any offset, recoupment, and /or collection

action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

c. In the event of Uncured Default, OIG-HHS may exclude AB from participating in all Federal health care programs until AB pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to AB. AB waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court.

Reinstatement to program participation is not automatic. If at the end of the period of exclusion, AB wishes to apply for reinstatement, it must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. AB will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

16. In exchange for valuable consideration provided in this Agreement, AB and Relator acknowledge the following:

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

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

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

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

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against AB for the claims that would otherwise be covered by the releases provided in Paragraph 4 and 6-8 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against AB in the amount of \$20 million, less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by AB, a receiver, trustee, custodian, or other similar official for AB;

(iii) if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States shall not be responsible for the return of any amounts already paid by the United States to the Relator; and

(iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relator pursuant to Paragraph 2 are recovered from the United States in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in

connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment made under Paragraph 1 of this Agreement, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States.

e. AB agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 16.d is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. AB shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). AB waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to AB that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on July 30, 2019.

17. AB agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of AB, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

- (3) AB'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 attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment AB makes to the United States pursuant to this Agreement and any payments that AB may make to Relator, including costs and attorneys' fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to: (i) retain an independent review organization to perform reviews as described in Section III of the CIA; and (ii) prepare and submit reports to the OIG-HHS

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in this paragraph 17.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to AB.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by AB, and AB shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by AB or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

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

applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the United States, or any state Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by AB 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. AB agrees that the United States, at a minimum, shall be entitled to recoup from AB 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 AB or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on AB 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 AB's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

18. 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 4-8 or 19 (waiver for beneficiaries paragraph), below.

19. AB agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

20. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1) as follows:

(a.) The Stipulation of Dismissal shall be with prejudice to the United States' and Relator's claims against AB as to the Covered Conduct; and

(b.) The Stipulation of Dismissal shall be without prejudice to the United States, and with prejudice as to Relator, as to all other claims against the AB Corporate Released Parties in the Civil Action.

21. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

22. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

23. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Pennsylvania. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

25. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

27. This Agreement is binding on AB's successors, transferees, heirs, and assigns.

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

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

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

THE UNITED STATES OF AMERICA

DATED: 12/16/2022

BY: Daniel A. Spiro Digitally signed by Daniel A. Spiro
Date: 2022.12.16 10:01:02 -05'00'
DANIEL SPIRO
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____
JACQUELINE C. ROMERO
United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____
GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division
Eastern District of Pennsylvania

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THE UNITED STATES OF AMERICA

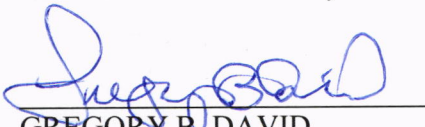
DATED: _____

BY: _____
DANIEL SPIRO
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 12/19/2022

BY: 
JACQUELINE C. ROMERO
United States Attorney
Eastern District of Pennsylvania

DATED: 12/19/2022

BY: 
GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division
Eastern District of Pennsylvania

DATED: 12/19/2022

BY:



CHARLENE KELLER FULLMER
Assistant United States Attorney
Deputy Chief, Civil Division
Eastern District of Pennsylvania

DATED: 12/19/2022

BY:



LAUREN DeBRUICKER
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY:

LISA M. RE

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:

SALVATORE M. MAIDA

General Counsel
Defense Health Agency
United States Department of Defense

DATED: _____

BY:

EDWARD M. DEHARDE

Deputy Associate Director of Federal
Employee Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

DATED: _____

BY:

PAUL ST. HILLAIRE

Assistant Inspector General
for Legal & Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

DATED: _____

BY: _____
CHARLENE KELLER FULLMER
Assistant United States Attorney
Deputy Chief, Civil Division
Eastern District of Pennsylvania

DATED: _____

BY: _____
LAUREN DeBRUICKER
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: 12/14/2022

BY: Lisa M. Re / RMP
LISA M. RE
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: _____
SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

DATED: _____

BY: _____
EDWARD M. DEHARDE
Deputy Associate Director of Federal
Employee Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

DATED: _____

BY: _____
PAUL ST. HILLAIRE
Assistant Inspector General
for Legal & Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

DATED: _____

BY: _____
CHARLENE KELLER FULLMER
Assistant United States Attorney
Deputy Chief, Civil Division
Eastern District of Pennsylvania

DATED: _____

BY: _____
LAUREN DeBRUICKER
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____
LISA M. RE
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: 12/8/2022

BY: _____
BLEY.PAUL.NICHOLAS.10998738
LAS.1099873821
Digitally signed by
BLEY.PAUL.NICHOLAS.10998738
21
Date: 2022.12.08 09:56:09 -05'00'
SALVATORE M. MAIDA
General Counsel
for Defense Health Agency
United States Department of Defense

DATED: _____

BY: _____
EDWARD M. DEHARDE
Deputy Associate Director of Federal
Employee Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

DATED: _____

BY: _____
PAUL ST. HILLAIRES
Assistant Inspector General
for Legal & Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

DATED: _____

BY: _____
CHARLENE KELLER FULLMER
Assistant United States Attorney
Deputy Chief, Civil Division
Eastern District of Pennsylvania

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LAUREN DeBRUICKER
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

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

DATED: _____

BY: _____
EDWARD DEHARDE
EDWARD M. DEHARDE
Deputy Associate Director of Federal
Employee Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

Digitally signed by EDWARD DEHARDE
Date: 2022.12.13 16:07:09 -05'00'

DATED: _____

BY: _____
PAUL ST. HILLAIRE
Assistant Inspector General
for Legal & Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

DATED: _____

BY: _____
CHARLENE KELLER FULLMER
Assistant United States Attorney
Deputy Chief, Civil Division
Eastern District of Pennsylvania

DATED: _____

BY: _____
LAUREN DeBRUICKER
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

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

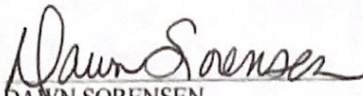
DATED: _____

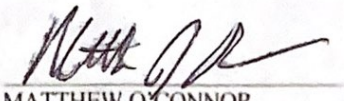
BY: _____
EDWARD M. DEHARDE
Deputy Associate Director of Federal
Employee Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

DATED: _____

BY: _____
PAUL ST HILLAIRE
Digitally signed by PAUL ST HILLAIRE
Date: 2022.12.13 10:22:05 -05'00'
PAUL ST. HILLAIRE
Assistant Inspector General
for Legal & Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

ADVANCED BIONICS LLC - DEFENDANT

DATED: 12/16/22 BY: 
DAWN SORENSEN
Vice President, Global Legal Affairs
Advanced Bionics Corporation

DATED: 12/16/22 BY: 
MATTHEW O'CONNOR
Counsel for Advanced Bionics LLC

DAVID NYBERG - RELATOR

DATED: _____ BY: _____
DAVID NYBERG

DATED: _____ BY: _____
JULIE BRACKER
Counsel for David Nyberg

ADVANCED BIONICS LLC - DEFENDANT

DATED: _____

BY: _____

DAWN SORENSEN
Vice President, Global Legal Affairs
Advanced Bionics Corporation

DATED: _____

BY: _____

MATTHEW O'CONNOR
Counsel for Advanced Bionics LLC

DAVID NYBERG - RELATOR


DATED: 12/1/2022

BY: _____


DAVID NYBERG

DATED: 12/12/22

BY: _____


JULIE BRACKER
Counsel for David Nyberg