

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”) (collectively, the “United States”); Viztek, LLC (“Viztek”) and Konica Minolta Healthcare Americas Inc. (“KMHA”) (collectively, the “Defendants”); and Relator, Leighsa Wilson, (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Viztek was a vendor of health information technology including integrated electronic health record (“EHR”) software. In October 2015, Viztek was acquired by Konica Minolta Medical Imaging U.S.A., Inc. (“KMMI”) and became a corporate subsidiary of KMMI. KMMI later changed its name to KMHA. Viztek was headquartered in Garner, North Carolina and prior to the acquisition, it was a privately-held Florida limited liability company. KMHA is headquartered in Wayne, New Jersey.

B. On December 4, 2017 (the “Qui Tam Filing Date”), the Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States of America ex rel. John Doe v. Viztek Inc., Konica Minolta Healthcare Americas Inc., Josip Cermin, Kevin Borden, and InfoGard Laboratories Inc.*, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The Civil Action alleges, among other things, that the named defendants violated the False Claims Act by causing false claims to be submitted to

the Department of Health and Human Services for federal incentive payments through the Electronic Health Record Incentive Program.

C. The United States contends that Defendants caused false claims for incentive payments to be submitted to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”).

D. Covered Conduct: The United States contends that it has certain civil claims against the Defendants under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, other federal statutes, or common law doctrines, for engaging in the following alleged conduct (the “Covered Conduct”):

In 2014, Viztek developed a software known as “EXA EHR.” Viztek knew that in order to receive incentive payments under the Centers for Medicare & Medicaid Services (“CMS”) EHR Incentive Program (“EHR Incentive Program”), eligible professionals, primarily health care providers, were required to use certified EHR software. Viztek also knew that in order to obtain certification for its product, Viztek had to represent to an Office of National Coordinator (“ONC”) Authorized Certification Body (“ONC-ACB”) that its software satisfied applicable ONC requirements and pass certification testing by an Accredited Testing Lab (“ATL”). Specifically, the United States contends that:

- a) Viztek falsely represented to its EXA EHR customer that use of EXA EHR by eligible professionals complied with all applicable requirements for certification and payment, when in fact Viztek knew that EXA EHR, as used by eligible professionals, would not satisfy all such requirements;

- b) During the testing period, between August 26, 2015 and March 15, 2016, Viztek hard-coded EXA EHR and falsely represented to its ONC-ACB that EXA EHR met the 2014 Edition certification criteria in order to pass certification testing requirements under ONC's Health IT Certification Program, even though Viztek knew that the software Viztek released to customers would not satisfy all such certification criteria as used by eligible professionals. As a result, Viztek fraudulently secured a 2014 Edition certification for EXA EHR on March 16, 2016; and
- c) Viztek knowingly caused eligible professionals who used EXA EHR to falsely attest to compliance with CMS requirements necessary to receive Medicare incentive payments and caused false claims for incentive payments to be submitted to the Medicare Program during the 2015 and 2016 program years.

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

F. 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. Defendants shall pay to the United States the sum of five hundred thousand dollars (\$500,000) (“Settlement Amount”) plus interest accrued at a rate of 1.875% per annum on the Settlement Amount from July 7, 2020, through August 13, 2020 (collectively, the “Settlement Proceeds”), no later than ten business days after the Effective Date of this Agreement (defined below) by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of New Jersey.

2. Conditioned upon the United States receiving the Settlement Proceeds from Defendants and as soon as feasible after receipt, the United States shall pay Relator twenty percent (20%) of the Settlement Proceeds by electronic funds transfer pursuant to written instructions provided by Relator’s counsel;

3. No later than ten business days after the Effective Date of this Agreement, Defendants shall pay one hundred fifty five thousand three hundred fifty two dollars (\$155,352) to Relator’s counsel in full satisfaction of any claim Relator may have for attorneys’ fees and costs, as contemplated by 31 U.S.C. §3730(d), in connection with the Civil Action, pursuant to written instructions provided by Relator’s counsel to Defendants.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Defendants’ full payment of the Settlement Proceeds, the United States releases Defendants from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the

Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below and conditioned upon Defendants' full payment of the Settlement Proceeds, and full payment of expenses and attorney's fees pursuant to Paragraph 3, the Relator, for herself and her heirs, successors, attorneys, agents, and assigns, releases all defendants named in the Civil Action, including, but not limited to, Viztek, LLC, KMHA, its subsidiaries and corporate predecessors, successors and assigns, as well as all of their current and former officers, directors, employees, attorneys, and other agents, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that she has against all defendants related to or arising from the Civil Action, including any claims she might otherwise have regarding unlawful retaliation pursuant to 31 U.S.C. § 3730(h), as well as claims seeking to recover their reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d).

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26 of the U.S. Code (the Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and
- f. Any liability of individuals.

7. Relator and her 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 payment described in Paragraph 2, Relator and his/her 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.

8. Defendants waive and shall not assert any defenses Defendants 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.

9. Defendants fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States,

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

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

11. 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), or any state payor, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor or any state payor any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

12. Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal 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 Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relator, including costs and attorneys' fees

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

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal

intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any state Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendants or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

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

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

13. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendants further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by another on their behalf.

14. Except as set forth in Paragraph 5 above, this Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 15 (waiver for beneficiaries paragraph), below.

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

16. Upon receipt of the payment described in Paragraph 1, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Defendants from the Civil Action pursuant to Rule 41(a)(1) as to the claims asserted in that action against the Defendants. Such

dismissal shall be: (a) with prejudice to the Relator as to all claims against all named defendants in the Civil Action; (b) with prejudice to the United States as to the Covered Conduct; (c) and without prejudice to the United States as to all other claims or allegations in the Civil Action.

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

18. Each Party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

19. 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 District of New Jersey. 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.

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

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

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

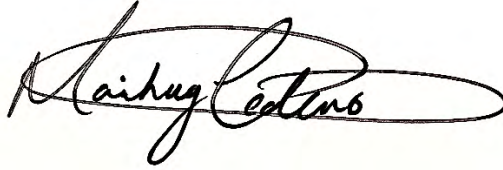
23. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

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

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

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

THE UNITED STATES OF AMERICA



DATED: 8/14/2020

BY: _____
MARIHUG P. CEDEÑO
Assistant United States Attorney
District of New Jersey

DATED: 8/17/2020

BY: Bernard J. Cooney
BERNARD J. COONEY
Acting Chief, Opioid Abuse Prevention &
Enforcement Unit
United States Attorney's Office
District of New Jersey

DATED: 8/25/2020

BY: 
CRAIG CARPENITO
United States Attorney
District of New Jersey

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

DATED: 08/19/2020

BY: Lisa M. Re

LISA M. RE

Assistant Inspector General for Legal Affairs

Office of Counsel to the Inspector General

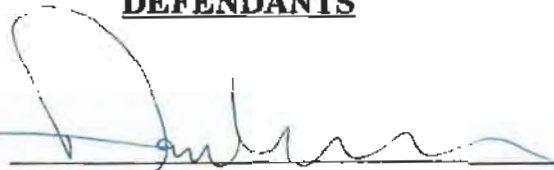
Office of Inspector General

United States Department of Health and

Human Services

DEFENDANTS

DATED: 13 JUL 2020 BY: _____

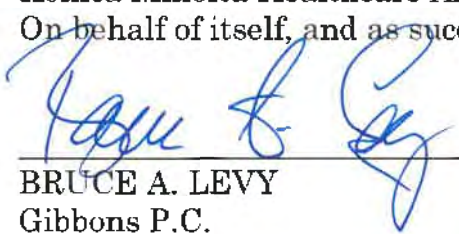

DAVID WIDMANN
President & CEO
Konica Minolta Healthcare Americas, Inc.,
On behalf of itself, and as successor to Viztek, LLC

DATED: _____ BY: _____

BRUCE A. LEVY
Gibbons P.C.
Counsel for Konica Minolta Healthcare Americas, Inc.

DEFENDANTS

DATED: _____ BY: _____
DAVID WIDMANN
President & CEO
Konica Minolta Healthcare Americas, Inc.,
On behalf of itself, and as successor to Viztek, LLC

DATED: 8/13/20 BY: 
BRUCE A. LEVY
Gibbons P.C.
Counsel for Konica Minolta Healthcare Americas, Inc.

RELATOR

DATED: 8/14/2020 BY: 
Leighsa Wilson

DATED: _____ BY: _____
Colette G. Matzzie
Phillips & Cohen LLP
Counsel for Relator

RELATOR

DATED: _____ BY: _____
Leighsa Wilson

DATED: 8/12/20 BY: Colette G. Matzke
Colette G. Matzke
Phillips & Cohen LLP
Counsel for Relator