

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”), and the Defense Health Agency (“DHA”) which administers the TRICARE program (collectively, the “United States”); Poplar Healthcare, PLLC, Poplar Healthcare Management, LLC (collectively, “Poplar”); and Gordon Wang, M.D. (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Poplar is a laboratory services company headquartered in Memphis, Tennessee that provides specialized laboratory testing services to, among other specialties, gastroenterologists. Poplar is licensed and accredited by the state of Rhode Island and has provided its services to physicians and patients in Rhode Island. Poplar submits bills for its services to private insurance companies and to the United States through the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1, and the TRICARE Program, 10 U.S.C. §§ 1071-1110b.

B. On October 29, 2014 Relator filed a *qui tam* action in the United States District Court for the District of Rhode Island captioned *United States ex rel. Gordon Wang v. Poplar Healthcare, PLLC and Poplar Healthcare Management, LLC*, C.A. No. 14-470 (ML), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The United States intends to intervene in the Civil Action as to the Covered Conduct, as defined below, for purposes of effectuating this settlement, on or about the Effective Date of this Agreement.

C. The United States contends that Poplar submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”), and the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”).

D. The United States contends that it has certain civil claims against Poplar for engaging in the following conduct arising out of Poplar’s promotion, marketing, and billing for immunohistochemical mast cell tryptase stains or tests (CPT Code 88342) (“Tryptase Stains”), during the period from January 1, 2006 through December 31, 2015. Specifically, the United States alleges that, during this period, through a promotional campaign known as “ID-ME” and otherwise, Poplar made claims about its ability to use Tryptase Stains to diagnose a condition known as mastocytic or mast cell enterocolitis. The United States contends these claims were not supported by adequate scientific evidence, nor consistent with the Tryptase Stains’ FDA approval; as a result of this conduct, Poplar submitted, or caused to be submitted, claims for payment for medically unnecessary Tryptase Stains to the Medicare and Tricare programs.

This conduct is referred to below as the “Covered Conduct.”

E. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of liability by Poplar nor a concession by the United States or Relator that their 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, attorney’s 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. Poplar shall pay to the United States EIGHT HUNDRED NINETY FOUR THOUSAND, NINE HUNDRED SIXTY TWO DOLLARS (\$894,962.00), together with interest thereon at the rate of 2.375% per annum from March 17, 2017 up to the date prior to which final payment is made (the “Settlement Amount”), by electronic funds transfer no later than five business days from the Effective Date of this Agreement, pursuant to written instructions to be provided by the Office of the United States Attorney for the District of Rhode Island.

2. Conditioned upon the United States receiving the Settlement Amount from Poplar, and as soon as feasible after receipt, the United States shall pay TWO HUNDRED FIVE THOUSAND, EIGHT HUNDRED FORTY ONE DOLLARS (\$205,841.00) to Relator by electronic funds transfer.

3. Poplar and Relator have agreed to resolve all claims for attorney’s fees, costs, or expenses allowable under 31 U.S.C. § 3730(d), and any claims allowable under 31 U.S.C. § 3730(h), arising from the filing of the Civil Action pursuant to a separate agreement entered into between Poplar and Relator.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Poplar’s full payment of the Settlement Amount, the United States releases Poplar, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, 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 below, and conditioned upon Poplar's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Poplar 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.

6. Notwithstanding the releases given in Paragraphs 4-5 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, U.S. Code (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;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. 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 payment described in Paragraph 2 above, Relator and his heirs, successors, attorneys, agents,

and assigns fully and finally releases, waives, and forever discharges the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Actions or under 31 U.S.C. § 3730, and from any claim to a share of the proceeds of this Agreement and/or the Civil Action.

8. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Poplar, and its officers, agents, and employees, from any liability to 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.

9. Poplar waives and shall not assert any defenses Poplar 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. 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.

10. Poplar fully and finally releases 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 Poplar 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 and the United States' investigation and prosecution thereof.

11. Poplar fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Poplar has asserted, could

have asserted, or may assert in the future against the Relator, related to the allegations in the Civil Action and the Relator's investigation and prosecution thereof.

12. 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, Medicaid, or TRICARE contractor or fiscal agent (*e.g.*, Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Poplar agrees not to resubmit to any Medicare, Medicaid, or TRICARE contractor or fiscal agent 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.

13. Poplar agrees 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 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Poplar, 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) Poplar'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 Poplar makes to the United States pursuant to this Agreement and any payments that Poplar may make to Relator, including costs and attorney's 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 by Poplar, and Poplar 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 Poplar or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Poplar 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 Poplar 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. Poplar agrees that the United States, at a minimum, shall be entitled to recoup from Poplar 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 Poplar or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Poplar 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 Poplar's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. 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. Poplar 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.

16. Upon receipt of the payments described in Paragraphs 1 and 3, above, the United States and Relator shall promptly sign and file in the Civil Action a Stipulation of Dismissal pursuant to Rule 41(a)(1), which dismissal shall be with prejudice to the Relator and without prejudice to the United States, except as to all claims for the Covered Conduct, which shall be with prejudice.

17. Except as expressly provided in Paragraph 3, *supra*, 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 Rhode Island. 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 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 Poplar's 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 ("Effective Date of this Agreement"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

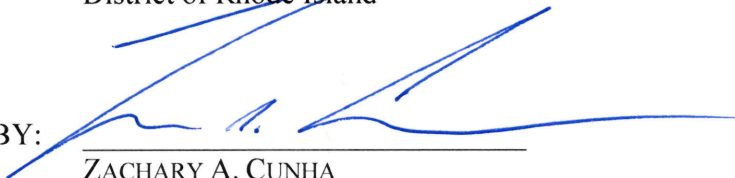
THE UNITED STATES OF AMERICA

CHAD A. READLER
Acting Assistant Attorney General,
Civil Division

STEPHEN G. DAMBRUCH
Acting United States Attorney,
District of Rhode Island

DATED: 4/28/2017

BY:



ZACHARY A. CUNHA
BETHANY N. WONG
Assistant United States Attorneys
District of Rhode Island

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

THE UNITED STATES OF AMERICA

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DATED: _____

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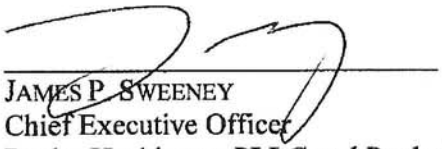
ZACHARY A. CUNHA
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District of Rhode Island

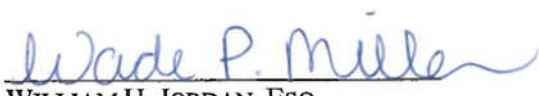
DATED: 4/28/17

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

POPLAR HEALTHCARE, PLLC & POPLAR HEALTHCARE MANAGEMENT, LLC

DATED: April 21, 2017 BY: 
JAMES P. SWEENEY
Chief Executive Officer
Poplar Healthcare, PLLC and Poplar Healthcare
Management LLC

DATED: 4-21-17 BY: 
WILLIAM H. JORDAN, ESQ.
WADE PEARSON MILLER, ESQ.
Alston & Bird, LLP
1201 W. Peachtree Street, N.W.
Atlanta, Georgia 30309-3424

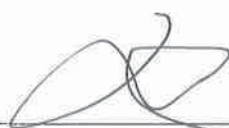
*Counsel for Poplar Healthcare, PLLC and Poplar
Healthcare Management, LLC*

RELATOR GORDON WANG

DATED: 4/15/2017

BY: 
GORDON WANG, M.D.

DATED: 4/19/17

BY: 
DAVID SCHER, ESQ.
R. SCOTT OSWALD, ESQ.
The Employment Law Group
888 17th Street, NW
Washington, D.C. 20006-3307

Counsel for Relator Gordon Wang