

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, STATE OF NEW  
JERSEY, STATE OF NEW YORK, STATE OF  
ILLINOIS, CITY OF CHICAGO AND CITY OF NEW  
YORK *ex rel.* JANE DOE,

Plaintiffs,

v.

BALANCE DIAGNOSTICS USA, LLC, MULTI  
MOBILE IMAGING, INC., and MOUNT SINAI  
DOCTORS RIVERSIDE MEDICAL GROUP,

Defendants.

15 Civ. 2641 (VSB)

UNITED STATES OF AMERICA,

Plaintiff,

v.

BALANCE DIAGNOSTICS USA, LLC,

Defendant.

**STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL**

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiff the United States of America (the “United States” or “Government”), by its attorney, Damian Williams, United States Attorney for the Southern District of New York; the relator Beverly Marcus (“Relator”), by her authorized representatives; and

defendant Balance Diagnostics USA, LLC, (“Balance” or “Defendant,” and together with the Government and Relator, the “Parties”), by its authorized representatives;

WHEREAS, Balance is a domestic limited liability company organized under the laws of the State of New York, with its principal place of business located in Cedarhurst, New York. Balance is a diagnostic testing facility that provides on-site mobile diagnostic testing services, such as video steganography (used to diagnose balance disorders) and ultrasound tests;

WHEREAS, on or about April 6, 2015, Relator filed a complaint under the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. §§ 3729 *et seq.*, and similar state false claims act laws, against Balance and Multi Mobile Imaging, Inc., and subsequently filed an amended complaint adding Mount Sinai Doctors Riverside Medical Group as a defendant, and a second amended complaint (the “Relator Complaint”), alleging, *inter alia*, that these entities entered into sham subleases with physicians in return for patient referrals;

WHEREAS, on or about March 20, 2024, the United States filed a Notice of Partial Intervention notifying the Court of its decision to intervene in the above-referenced action with respect to claims against Balance, and its decision to decline to intervene with respect to the claims against the other defendants named in the Relator Complaint;

WHEREAS, the Government alleges that from January 2009 through December 2019 (the “Covered Period”), Balance knowingly paid hundreds of thousands of dollars in kickbacks to physicians and their medical practices in the form of sham “rent payments » to induce them to refer patients to Balance for diagnostic tests in violation of the Anti-Kickback Statute (the “AKS”), 42 U.S.C. § 1320a-7b(b). The Government further alleges that such violations of the AKS rendered the claims Balance submitted to Medicare and New York State Medicaid for these

diagnostic tests false under the FCA. The conduct described in this Paragraph is the “Covered Conduct” for purposes of this Stipulation;

WHEREAS, contemporaneous with the filing of this Stipulation, the Government is filing a Complaint-In-Intervention in the above-referenced *qui tam* action (“Government Complaint”), in which it is asserting claims against Balance under the FCA for the Covered Conduct;

WHEREAS, Balance intends to enter into a separate settlement agreement with the State of New York (the “State Settlement”) to resolve claims asserted by the State of New York under New York law for the Covered Conduct, and has agreed to pay a total of \$774,150 plus interest and enter into a consent judgment for a total of \$1,918,892 pursuant to the State Settlement;

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against Defendant in the Government Complaint and the Relator Complaint for the Covered Conduct;

NOW, THEREFORE, upon the Parties’ agreement IT IS HEREBY ORDERED that:

### **TERMS AND CONDITIONS**

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court’s exercise of personal jurisdiction over each of them.

2. Defendant admits, acknowledges and accepts responsibility for the following conduct (the “Admitted Conduct”):

- a. During the Covered Period, Balance provided on-site mobile diagnostic testing services (“DTS”) to patients at the medical offices of more than 100 physicians and medical practices (“Providers”) in the New York City area. Balance entered into sublease agreements with these Providers pursuant to which Balance rented space within the Providers’ medical offices to

administer DTS to patients several times per month. Many of these patients were federal healthcare program (“FHP”) beneficiaries.

- b. Balance understood that it must comply with the AKS, which makes it illegal to knowingly and willfully “offer[] or pay[] any remuneration (including any kickback, bribe, or rebate) . . . to any person to induce such person . . . to purchase, . . . order, or arrange for or recommend purchasing . . . or ordering any good . . . or item for which payment may be made in whole or in part under a [FHP].”
- c. Pursuant to the AKS safe harbor regulations concerning rental of spaces, 42 C.F.R. § 1001.952(b) (the "Safe Harbor Regulation"), payments made to lease medical office space are not considered “remuneration” for purposes of the AKS only if the arrangement satisfies the following specific criteria:
  - (1) The lease agreement is set out in writing and signed by the parties.
  - (2) The lease covers all of the premises leased between the parties for the term of the lease and specifies the premises covered by the lease.
  - (3) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such intervals.
  - (4) The term of the lease is for not less than one year.
  - (5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions, and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid or other FHPs.

- (6) The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.
- d. A substantial number of the sublease agreements that Balance entered into with Providers failed to comply with one or more of the six elements of the Safe Harbor Regulation.
- e. In some instances, Balance and the Providers did not enter into written sublease agreements signed by both parties. In other instances, when Balance and the Providers executed written subleases, the written agreements did not accurately reflect the actual terms of the parties' arrangements, or the parties' conduct deviated from the terms of the written agreements. For example, some written subleases incorrectly stated the square footage of the subleased premises, and, on some occasions, Balance did not pay the rent amount or follow the schedule for accessing the premises specified in the subleases.
- f. In a number of instances, Balance and the Providers determined the amount of rent to be paid pursuant to the sublease by taking into account the anticipated volume or value of the patients referred to Balance. Frequently, Balance representatives reached out to the Providers about leasing office space from them, and if the Providers were interested, the Balance representatives inquired about the volume of patient referrals for DTS that Balance could expect to receive in a given month. The Balance representatives and the Providers then negotiated the monthly rent amount by taking into account the anticipated volume and/or value of such referrals.

The greater the number of patients the Providers indicated they could refer to Balance for DTS each month, the greater the monthly amount Balance agreed to pay the Providers.

- g. Balance typically performed no meaningful analysis to determine the fair market value of the subleased premises or to verify that the agreed-upon monthly rent payments were consistent with fair market value. In a number of instances, the payments made to the Providers substantially exceeded the fair market value of the rented space.
- h. After entering into a sublease arrangement, Balance representatives monitored the number of patient referrals received each month from the Provider.
- i. Balance took a number of steps to address situations where the volume of patient referrals was meaningfully less than that which Balance had anticipated when setting the monthly rent amount. For example, Balance representatives routinely reached out to Providers to press them to achieve the expected patient referral rates. Sometimes, Balance representatives secured commitments from Providers to increase the number of patients they would refer for DTS each month. In other instances, when there were fewer referrals or Balance did not use the space because of low patient referrals, Balance paid the Providers less than the amount specified in the sublease and/or varied its payment (between the amount specified in the sublease and a lesser amount) based on the actual patient referral volume.

In other instances, Balance representatives renegotiated the rent amount downward or terminated the sublease arrangement entirely.

- j. The Providers referred thousands of FHP beneficiaries to Balance for DTS. After the DTS were performed, another medical provider read and interpreted the results of the DTS (the “Reader”). Sometimes the Reader was one of the Providers who had sublease arrangements with Balance. Both Balance and the Readers submitted reimbursement claims to FHPs for these DTS and related services.
- k. In a substantial number of instances, Balance submitted, or caused the Readers to submit, claims to FHPs that sought reimbursement for DTS and related services provided to patients who were referred by Providers with whom Balance had entered sublease agreements that did not comply with the Safe Harbor Regulation. The FHPs paid Balance and the Readers collectively millions of dollars for DTS and related services that they were not entitled to receive.

3. Defendant shall execute and agree to the entry of a consent judgment in favor of the Government and against Defendant in the amount of \$4,280,108, a copy of which is attached hereto as Exhibit A (the “Consent Judgment”). The Government may use the Consent Judgment to obtain a security interest in any asset or property of the Defendant, but shall not engage in other collection activity with respect to the Consent Judgment so long as Defendant fully complies with the terms of this Stipulation. Pursuant to this Stipulation, Defendant agrees to pay and the Government agrees to accept the payment of \$1,725,850 plus applicable interest (defined below in this Paragraph) in full satisfaction of the Consent Judgment (the “Settlement Amount”).

Defendant shall pay the Settlement Amount to the Government in six installments according to the schedule set forth below. Jonathan Gruner and Dovi Faivish, the owners of Balance, have each executed Guarantee Agreements with the United States personally guaranteeing the Settlement Amount, copies of which are attached hereto as Exhibit B.

- a. Within fourteen (14) business days of the Effective Date (defined below in Paragraph 34), Defendant shall pay the United States the sum of \$517,755.
- b. On or before April 1, 2025, Defendant shall pay the United States the sum of \$172,585, plus interest which shall be compounded annually at a rate of 4.5% accruing from the Effective Date.
- c. On or before April 1, 2026, Defendant shall pay the United States the sum of \$172,585, plus interest which shall be compounded annually at a rate of 4.5% accruing from the Effective Date.
- d. On or before April 1, 2027, Defendant shall pay the United States the sum of \$172,585, plus interest which shall be compounded annually at a rate of 4.5% accruing from the Effective Date.
- e. On or before April 1, 2028, Defendant shall pay the United States the sum of \$172,585, plus interest which shall be compounded annually at a rate of 4.5% accruing from the Effective Date.
- f. On or before April 1, 2029, Defendant shall pay the United States the sum of \$517,755, plus interest which shall be compounded annually at a rate of 4.5 % accruing from the Effective Date.

4. Defendant shall make the above-referenced payments in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office



for the Southern District of New York. The full Settlement Amount constitutes restitution to the United States.

5. Should Defendant comply fully with the payment schedule set forth in Paragraph 3 above as well as the other terms of this Stipulation, the Consent Judgment shall be deemed to be satisfied in full and, upon Defendant's request, the Government shall file with the Clerk of the Court and deliver to Defendant a Full Satisfaction of Judgment. In the event that Defendant fully pays the Settlement Amount faster than as provided in the payment schedule set forth in Paragraph 3 above, and fully complies with all other terms of the Stipulation, the Consent Judgment shall be deemed to be satisfied in full and, upon Defendant's request, the Government shall file with the Clerk of the Court and deliver to Defendant a Full Satisfaction of Judgment. Should Defendant fail to comply fully with the payment schedule set forth in Paragraph 3 above or any other term of this Stipulation, Defendant shall be in default of this Stipulation, in which case the Government may take any of the actions set forth in Paragraph 12 below.

6. Defendant shall ensure that any leases of premises or other business arrangements it enters into with any medical providers comply with the AKS and its Safe Harbor regulations, 42 C.F.R. §§ 1001.952.

7. Defendant agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, Defendant shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its 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. Defendant further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of

interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

8. Subject to the exceptions in Paragraph 12 (concerning reserved claims) below and subject to Paragraph 13 (concerning default) below, Paragraph 19 (concerning bankruptcy proceedings) below, and Paragraph 20 (concerning disclosure of financial information) below, and conditioned on Defendant's full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the United States pursuant to Paragraph 3 above, the United States releases Defendant, including its subsidiaries and corporate predecessors, successors and assigns, from any civil or administrative monetary claim that the United States has for the Covered Conduct under the FCA, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812, and the common law theories of fraud, payment by mistake, and unjust enrichment. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Defendant from liability of any kind.

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

10. Subject to the exceptions in Paragraph 12 (concerning reserved claims) below and subject to Paragraph 13 (concerning default) below, Paragraph 19 (concerning bankruptcy proceedings) below, and Paragraph 20 (concerning disclosure of financial information) below, and conditioned on Defendant's full compliance with the terms of this Stipulation, including full

payment of the Settlement Amount to the United States pursuant to Paragraph 3 above, Relator, for herself and her heirs, successors, attorneys, agents, and assigns, releases Defendant, including its subsidiaries and corporate predecessors, successors and assigns, as well as all of its 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 Relator has against Defendant related to or arising from the Relator Complaint; provided, however, that nothing in this Stipulation shall preclude Relator from seeking to recover her reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d).

11. In consideration of the execution of this Stipulation by Relator and the Relator's release as set forth in Paragraph 10 above, Defendant, including its subsidiaries, predecessors, and corporate successors and assigns, as well as all of its current and former officers, directors, employees, attorneys, and other agents, release Relator and her heirs, successors, attorneys, agents, and assigns, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Defendant has against Relator related to or arising from the Relator Complaint.

12. Notwithstanding the releases given in Paragraph 8, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any administrative liability or enforcement right, including but not limited to the mandatory or permissive

exclusion from Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) or 42 U.S.C.

§ 1320a-7(b) (permissive exclusion).

- 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 Stipulation; and
- f. any liability of individuals.

13. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct, due solely to Defendant's financial condition as reflected in the Financial Disclosures referenced in Paragraph 20 below. Defendant shall be in default of this Stipulation if Defendant fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 3 above or if it fails to comply materially with any other term of this Stipulation that applies to it ("Default"). The Government will provide a written Notice of Default to Defendant of any Default in the manner set forth in Paragraph 33 below. Defendant shall then have an opportunity to cure the 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 Stipulation up to the date of payment. If Defendant 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). In the event of an Uncured Default, the United States may initiate a collection action or take any other action with respect to the unpaid portion of the amount specified in the Consent Judgment attached hereto as Exhibit A. Defendant also agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Stipulation, and reinstate the claims asserted against Defendant in the Government Complaint or bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the releases provided in Paragraph 8, with any recovery reduced by the amount of any payments previously made by Defendant to the United States under this Stipulation; (ii) take any action to enforce this Stipulation in a new action or by reinstating the Government Complaint; (iii) offset the remaining unpaid balance from any amounts due and owing to Defendant 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 Stipulation, 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, Defendant 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 Stipulation pursuant to this paragraph, Defendant 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 (i) are filed by the United States against Defendant within 120 days of written notification that this Stipulation has been rescinded, and (ii) relate to the Covered Conduct, except to the extent

these defenses were available on April 6, 2015. Defendant 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.

14. In the event of an Uncured Default, OIG-HHS may exclude Defendant from participating in all Federal health care programs until Defendant pays the Settlement Amount, with interest, as set forth above (“Exclusion for Default”). OIG-HHS will provide written notice of any such exclusion to Defendant. Defendants waive any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agree 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, Defendant 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. Defendant 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 Stipulation or otherwise available.

15. Defendant, having truthfully admitted to the Admitted Conduct set forth in Paragraph 2 hereof, agrees that it shall not, through its attorneys, agents, officers, or employees, make any public statement, including but not limited to, any statement in a press release, social media forum, or website, that contradicts or is inconsistent with the Admitted Conduct or suggests that the Admitted Conduct is not wrongful (a “Contradictory Statement”). Any Contradictory Statement by Defendant, its attorneys, agents, officers, or employees, shall constitute a violation of this Stipulation, thereby authorizing the Government to pursue any of the remedies set forth in Paragraph 13 hereof, or seek other appropriate relief from the Court. Before pursuing any remedy,

the Government shall notify Defendant that it has determined that Defendant has made a Contradictory Statement. Upon receiving notice from the Government, Defendant may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If Defendant learns of a potential Contradictory Statement by its attorneys, agents, officers, or employees, Defendant must notify the Government of the statement within 24 hours. The decision as to whether any statement constitutes a Contradictory Statement or will be imputed to Defendant for the purpose of this Stipulation, or whether Defendant adequately repudiated a Contradictory Statement to cure a violation of this Stipulation, shall be within the sole discretion of the Government. Consistent with this provision, Defendant may raise defenses and/or assert affirmative claims or defenses in any proceeding brought by private and/or public parties, so long as doing so would not contradict or be inconsistent with the Admitted Conduct.

16. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation; Relator agrees and confirms that the terms of this Stipulation are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

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

18. Defendant waives and shall not assert any defenses Defendant 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 Stipulation bars a remedy sought in such criminal prosecution or administrative action.

19. In exchange for valuable consideration provided in this Stipulation, Defendant acknowledges the following:

- a. Defendant has reviewed its financial situation and warrants that it 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 payment to the United States of the Settlement Amount.
- b. 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 Defendant, 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.
- c. 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.
- d. The Parties do not intend to hinder, delay, or defraud any entity to which Defendant was or became indebted on or after the date of any transfer contemplated in this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).



- e. If Defendant's obligations under this Stipulation 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, Defendant 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 Defendant's debts, or to adjudicate Defendant as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant or for all or any substantial part of Defendant's assets:
- i. the United States may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the releases provided in Paragraphs 7 above;
  - ii. the United States has an undisputed, noncontingent, and liquidated allowed claim against Defendant in the amount of \$4,280,108, less any payments received pursuant to the Stipulation, provided, however, that such payments are not otherwise avoided and recovered from the United States by Defendant, a receiver, trustee, custodian, or other similar official for Defendant; and
  - iii. if any payments are avoided and recovered by Defendant, a receiver, trustee, custodian, or similar official for Defendant, Relator shall, within thirty days of written notice from the United States to the

undersigned Relator's counsel, return any portions of such payments already paid by the United States to Relator.

- f. Defendant agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 19(e) above 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. Defendant 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). Defendant 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 Defendant that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on April 6, 2015.

20. Defendant, and its owners, Jonathan Gruner and Dovi Faivish, have provided sworn financial disclosures and supporting documents ("Financial Disclosures") to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Stipulation. Defendant warrants that the Financial Disclosures are complete, accurate, and current. If the United States learns of asset(s) in which Defendant, or Jonathan Gruner and Dovi Faivish, had an interest at the time of the execution of this Stipulation that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or

misrepresentation by Defendant, or Jonathan Gruner and Dovi Faivish, in connection with the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth of Defendant, Jonathan Gruner, and Dovi Faivish as reflected in the Financial Disclosures by \$75,000 or more, the United States may at its option: (a) rescind this Stipulation and reinstate its lawsuit based on the Covered Conduct, or (b) let the Stipulation stand and collect the full Settlement Amount plus one hundred percent (100%) of the net value of the previously undisclosed assets. Defendant agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees that it will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, 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 pursuant to this paragraph rescinds this Stipulation, Defendant waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Defendant that this Stipulation has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on April 6, 2015.

21. 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 or Medicaid Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Defendant agrees not to resubmit to any Medicare 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.

22. Defendant 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. §§ 1395-1395lll and 1396-1396w-6; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendant, including its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Stipulation;
  - (2) the United States' audit(s) and civil investigation(s) of matters covered by this Stipulation;
  - (3) Defendant's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with matters covered by this Stipulation (including attorneys' fees);
  - (4) the negotiation and performance of this Stipulation; and
  - (5) any payment Defendant makes to the United States pursuant to this Stipulation and any payment Defendant may make to Relator, including expenses, 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 by Defendant, and Defendant 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 Defendant or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, Defendant 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 Defendant 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. Defendant agrees that the United States, at a minimum, shall be entitled to recoup from Defendant 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, including the Department of Justice and/or the affected agencies, reserves its rights to disagree with any calculation submitted by Defendant or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Defendant's or any of its subsidiaries' or affiliates' cost reports, cost statements, or information reports.

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

23. This Stipulation 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 as otherwise provided herein.

24. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation; provided, however, nothing in this Stipulation shall preclude Relator from seeking to recover any expenses or attorneys' fees and costs from Defendant, pursuant to 31 U.S.C. § 3730(d).

25. Any failure by the Government to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

26. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York.

27. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

28. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties. No prior agreements, oral representations, or statements shall be considered part of this Stipulation.

29. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

30. This Stipulation is binding on Defendant's successors, transferees, heirs, and assigns.

31. This Stipulation is binding on Relator's successors, transferees, heirs, and assigns.

32. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

33. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:

Pierre G. Armand  
Assistant United States Attorney  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, Third Floor  
New York, New York 10007  
Email: pierre.armand@usdoj.gov

TO DEFENDANT:

Aaron Lichtman  
The Lichtman Law Firm  
56 Westchester Avenue  
Pound Ridge, New York 10576  
Email: alichtman@lichtmanl.com

TO RELATOR:

Joseph Trautwein  
Sheller, P.C.  
1515 Market Street, Suite 1100  
Philadelphia, Pennsylvania 19102  
Email: jtrautwein@cpmitem.com

34. The effective date of this Stipulation is the date upon which the Stipulation is approved by the Court (the "Effective Date").

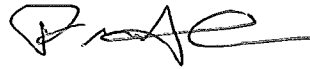


Agreed to by:

**THE UNITED STATES OF AMERICA**

Dated: New York, New York  
5/10, 2024

DAMIAN WILLIAMS  
United States Attorney for the  
Southern District of New York



By: \_\_\_\_\_

PIERRE G. ARMAND  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Tel.: (212) 637-2724  
Email: pierre.armand@usdoj.gov

*Attorney for the United States of America*

**RELATOR**

Dated: 5-10-, 2024  
\_\_\_\_\_, \_\_\_\_\_

By: Beverly Marcus  
\_\_\_\_\_  
*Relator*

Dated: Philadelphia, PA  
5/10, 2024

**SHELLER, P.C.**

By:   
**JOSEPH TRAUTWEIN**  
1515 Market Street, Suite 1100  
Philadelphia, Pennsylvania 19102  
Tel.: (215) 790-7300  
Email: jtrautwein@cpmiteam.com

*Attorneys for Relator*



# EXHIBIT A



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, STATE OF NEW  
JERSEY, STATE OF NEW YORK, STATE OF  
ILLINOIS, CITY OF CHICAGO AND CITY OF NEW  
YORK *ex rel.* JANE DOE,

Plaintiffs,

v.

BALANCE DIAGNOSTICS USA, LLC, MULTI  
MOBILE IMAGING, INC., and MOUNT SINAI  
DOCTORS RIVERSIDE MEDICAL GROUP,

Defendants.

15 Civ. 2641 (VSB)

UNITED STATES OF AMERICA,

Plaintiff,

v.

BALANCE DIAGNOSTICS USA, LLC.

Defendant.

**JUDGMENT**

Upon the consent of plaintiff the United States of America and defendant Balance  
Diagnostics USA, LLC (“Balance”), it is hereby

ORDERED, ADJUDGED and DECREED: that plaintiff the United States of America  
is awarded judgment in the amount of \$4,280,108, against Balance as well as post-judgment  
interest at the rate of 12% per annum compounded daily.

Dated: New York, New York  
5/10, 2024

DAMIAN WILLIAMS  
United States Attorney for the  
Southern District of New York




By: \_\_\_\_\_

PIERRE G. ARMAND  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Tel.: (212) 637-2724  
Email: pierre.armand@usdoj.gov

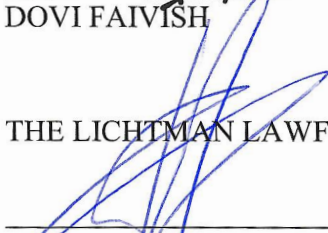
*Attorney for the United States of America*

Dated: May 10, 2024  
                                , 2024

BALANCE DIAGNOSTICS USA, LLC


By:   
DOVI FAIVISH

THE LICHTMAN LAW FIRM

By:   
Aaron Lichtman  
56 Westchester Avenue  
Pound Ridge, New York 10576  
Tel.: (914) 232-1005  
Email: [alichtman@lichtmanl.com](mailto:alichtman@lichtmanl.com)

*Attorneys for Defendant Balance Diagnostics  
USA, LLC*

SO ORDERED:

  
HON. VERNON S. BRODERICK  
UNITED STATES DISTRICT JUDGE

Dated: May 13, 2024

# EXHIBIT B



## GUARANTY AGREEMENT

This Guaranty Agreement is entered into by and among Jonathan Gruner, an owner of Balance Diagnostics USA, LLC ("Balance"), Dovi Faivish, an owner of Balance (together the "Guarantors"), acting in their personal capacities, and the United States of America (the "United States" or "Government," and together with the Guarantors, the "Parties").

WHEREAS, on March 20, 2024, the Government, through the Office of the United States Attorney for the Southern District of New York, filed a Notice of Partial Intervention in an action filed by a relator under the *qui tam* provisions of the False Claims Act ("FCA"), 31 U.S.C. §§ 3729 *et seq.*, in the United States District Court for the Southern District of New York, *United States ex. rel. Doe v. Balance Diagnostics USA LLC et al.*, 15 Civ. 2641 (VSB);

WHEREAS, the Government is filing a Complaint-In-Intervention in the above-referenced *qui tam* action (the "Government Complaint"), in which it is asserting, *inter alia*, claims against Balance under the FCA for allegedly paying kickbacks to physicians and their medical practices in the form of sham "rent payments" to induce them to refer patients to Balance for diagnostic tests in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b);

WHEREAS, the United States, Balance, and the relator in the *qui tam* action wish to settle claims related to the aforementioned allegations through the execution of a Stipulation and Order of Settlement and Dismissal (the "Stipulation"), dated May 10, 2024, and the Exhibits thereto, including this Guaranty Agreement;

WHEREAS, the specific claims being resolved are set forth in the Stipulation;

WHEREAS, Balance has executed the Stipulation, incorporated by reference herein, under which Balance shall pay the United States \$1,725,850 plus applicable interest (the "Settlement Amount") as set forth in Paragraph 3 of the Stipulation; and

WHEREAS, the Guarantors are not parties to the Stipulation;

IT IS HEREBY AGREED that, in exchange for adequate consideration, the Parties shall undertake the following obligations:

### TERMS AND CONDITIONS

1. Statement of Guaranty. The Guarantors each unconditionally and personally guarantee the prompt payment of the full Settlement Amount by Balance as set forth in Paragraphs 3 of the Stipulation.
2. Nature of Guaranty. The Guaranty set forth in Paragraph 1 of this Agreement constitutes a personal guaranty by each Guarantor of payment of the full Settlement Amount by Balance as set forth in Paragraph 3 of the Stipulation and shall not be

affected by any event, occurrence or circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety (other than full and complete payment of the Settlement Amount). In the event that any payment by Balance pursuant to the Stipulation is rescinded or must otherwise be returned by virtue of any action by any bankruptcy court, the Guarantors shall each remain personally liable hereunder with respect to such Settlement Amount as if payment had not been made. The Guarantors agree that the United States may resort to either or both Guarantors for payment of any unpaid portion of the Settlement Amount without regard to whether the United States shall have proceeded against any other person or entity primarily or secondarily obligated with respect to any of the Settlement Amount.

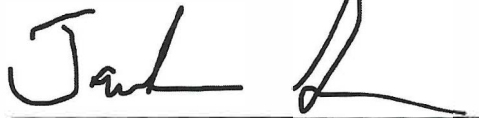
3. Acceleration. The Guarantors agree that, within ten days of receipt of written notice from the United States that Balance (i) has failed to make any payment required by the Stipulation, and (ii) has not cured its Default as provided for under Paragraph 13 of the Stipulation, the Guarantors will be jointly and severally obligated to pay in full the amount then due under the Stipulation. The Guarantors understand that the failure to adhere fully to the terms of this paragraph would be a material breach of this Guaranty Agreement.
4. No Waiver; Cumulative Rights. No failure on the part of the United States to exercise, and no delay in exercising any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the United States of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to the United States or allowed by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the United States from time to time.
5. Effective Date. This Guaranty Agreement shall become effective on the Effective Date, as defined in Paragraph 34 of the Stipulation.
6. Subrogation. The Guarantors shall not exercise any subrogation rights they may acquire against Balance as a result of this Guaranty Agreement until all of the Settlement Amount owed to the United States has been paid in full.
7. Waiver of Notice. The Guarantors waive notice of the acceptance of this Guaranty, presentment, demand, notice of dishonor, protest, and all other notices whatsoever.
8. Duration. This Guaranty shall continue in full force and effect until all of the Settlement Amount has been paid in full.
9. Entire Agreement. Each Party hereto represents and warrants that this Agreement constitutes a valid and binding agreement enforceable against each Party in accordance with its terms. This Agreement embodies the entire guaranty agreement between the Parties. There are no promises, terms, conditions or obligations other than those contained in this Agreement. This Agreement supersedes all previous

communications, representations or agreements either verbal or written between the Guarantors and the United States.

10. Severability. Should any one or more provisions of this Agreement be determined to be illegal, unenforceable, void or voidable, all other provisions shall remain in effect.
11. Assignment. No Party hereto may assign its rights, interest or obligations hereunder to any other person or entity without prior written consent of the other Party. The provisions of this Agreement shall be binding on the Parties hereto and their successors and assigns. This Agreement is to continue in full force and effect notwithstanding a change in the composition, ownership or corporate structure of Balance.
12. Miscellaneous. This Agreement shall not be amended except in a writing signed by all Parties. Each signatory hereto represents and warrants that he or she is authorized to execute and deliver this Agreement on behalf of the Party for whom he or she is purporting to act. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.
13. Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with federal common law. The Parties consent to the jurisdiction of the United States District Court for the Southern District of New York in any action to enforce any term of this Agreement.

Dated: 05/10, 2024

GUARANTORS



JONATHAN GRUNER

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
DOVI FAIVISH

communications, representations or agreements either verbal or written between the Guarantors and the United States.

10. Severability. Should any one or more provisions of this Agreement be determined to be illegal, unenforceable, void or voidable, all other provisions shall remain in effect.
11. Assignment. No Party hereto may assign its rights, interest or obligations hereunder to any other person or entity without prior written consent of the other Party. The provisions of this Agreement shall be binding on the Parties hereto and their successors and assigns. This Agreement is to continue in full force and effect notwithstanding a change in the composition, ownership or corporate structure of Balance.
12. Miscellaneous. This Agreement shall not be amended except in a writing signed by all Parties. Each signatory hereto represents and warrants that he or she is authorized to execute and deliver this Agreement on behalf of the Party for whom he or she is purporting to act. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.
13. Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with federal common law. The Parties consent to the jurisdiction of the United States District Court for the Southern District of New York in any action to enforce any term of this Agreement.

**GUARANTORS**

Dated: \_\_\_\_\_, 2024

May 10, 2024  
Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
JONATHAN GRUNER



\_\_\_\_\_  
DOVI FAIVISH

**THE UNITED STATES OF AMERICA**

Dated: 5/10, 2024

DAMIAN WILLIAMS  
United States Attorney for the  
Southern District of New York

By:



---

PIERRE G. ARMAND  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Tel.: (212) 637-2724  
Email: pierre.armand@usdoj.gov  
*Attorney for the United States of America*