

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 U.S. Department of Defense and its operating components (“DoD”) (collectively the “United States”), Laboratory Corporation of America, and Donna Hecker-Gross (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Laboratory Corporation of America (“Labcorp”), a Delaware corporation with a principal place of business in North Carolina, is a provider of clinical laboratory services. In 2012, Labcorp entered into a contract with the DoD to provide laboratory testing services to DoD military treatment facilities. (Contract number W81K04-12-D-0017). In 2018, Labcorp entered into another contract with the DoD to provide similar services (Contract number W81K04-18-D-0029). The foregoing contracts, and any extensions thereof, are referred to herein as the “DoD contracts”. GeneDx, LLC (“GeneDx”) is a third-party laboratory that performed certain genetic testing under the DoD contracts as a reference laboratory.

B. On November 8, 2018, Donna Hecker-Gross filed a *qui tam* action in the United States District Court for the District of Maryland captioned *United States ex rel. Donna Hecker-Gross v. Laboratory Corporation of America, Inc.*, Case No. PX-18-3459, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleges that Labcorp double and triple billed DoD for tests

performed by GeneDx under the DoD contracts. Relator also contends that she was terminated by Labcorp in violation of 31 U.S.C. § 3730(h).

C. The United States contends that during the period from December 1, 2013 through June 30, 2021 it has certain civil claims against Labcorp arising from overbillings associated with GeneDx services performed under the DoD contracts. These alleged overbillings took three forms (hereinafter referred to as the “Covered Conduct”):

1. Labcorp double and/or triple billed DoD for genetic tests performed by GeneDx;
2. Labcorp overcharged DoD for genetic tests performed by GeneDx. These overcharges occurred because GeneDx was not incorporated into Labcorp’s electronic billing system and Labcorp did not always reconcile what GeneDx actually charged versus what Labcorp billed DoD;
3. Labcorp inappropriately billed DoD for tests performed by GeneDx when Labcorp could not later locate evidence of a (a) DoD requisition form, (b) GeneDx test result, and/or (c) corresponding Gene Dx invoice.

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

E. 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. Labcorp shall pay to the United States \$2,100,000 (Two Million and One Hundred Thousand Dollars) (“Settlement Amount”), of which \$1,170,681 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the District of Maryland, no later than 30 business days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$357,000 to Relator by electronic funds transfer (“Relator’s Share”).

3. Labcorp and the Relator have reached agreement regarding Relator’s and her counsel’s claims for expenses, attorneys’ fees and costs and for her wrongful termination claims under subsections 3730(d) and 3730(h), the terms of which have been memorialized in separate agreements.

4. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount, the United States releases Labcorp together with its current and former parent corporations (including Laboratory Corporation of America Holdings); 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 7 below, and upon (a) the United States' receipt of the Settlement Amount and (b) the Relator's and her counsel's receipt of the funds agreed to by Labcorp pursuant to the separate agreements referenced in Paragraph 3 above, Relator hereby irrevocably, unconditionally, and generally releases, acquits, and forever discharges to the fullest extent permitted by law, Labcorp and each of its officers, directors, shareholders, members, employees, agents, predecessors, representatives, attorneys, divisions, parents (including Laboratory Corporation of America Holdings), subsidiaries, affiliates (and agents, directors, officers, current and former employees, representatives and attorneys of such divisions, subsidiaries, and affiliates), and all persons acting by, through, under, or in concert with any of them (collectively referred to as "Released Parties"), from any and all grievances, charges, complaints, claims (specifically including any claims the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733), damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses, of any nature whatsoever, known or unknown, which Relator now has, owns, or holds, or claims to have, own, or hold, or which Relator at any time heretofore, had, owned, or held, or claimed to have, own, or hold from the beginning of time to the Effective Date of this Agreement. Relator represents that she has not assigned or transferred any of her claims to any person, entity, or thing, and covenants and agrees not to assert or pursue any of her claims in any way, including by offset or recoupment.

6. Within 10 business days of the latter of Labcorp's payment to the United States of the amount specified in Paragraph 1 above, and the amounts due to Relator and her counsel pursuant to agreements between Labcorp and Relator referenced in Paragraph

3 above, Relator shall move for dismissal of the Civil Action, and the dismissal shall be with prejudice to the Relator and without prejudice to the United States. The motion for dismissal shall be conditioned upon Labcorp's payment in full of the amount set forth in Paragraph 1 above. The United States shall consent to the dismissal.

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

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in the Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- 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.

8. 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 Relator's Share, Relator and 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.

9. Upon receipt of Relator's and her counsel's receipt of the payments agreed to by Labcorp pursuant to the separate agreements referenced in Paragraph 3 above, Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Labcorp, 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 attorneys' fees and costs.

10. Labcorp waives and shall not assert any defenses Labcorp 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.

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

12. Labcorp fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that

Labcorp has 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.

13. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Labcorp, and 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) Labcorp's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Labcorp makes to the United States pursuant to this Agreement and any payments that Labcorp may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Labcorp, and Labcorp shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: Within 90 days of the Effective Date of this Agreement, Labcorp shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Labcorp or any of its subsidiaries or affiliates from the United States. Labcorp agrees that the United States, at a minimum, shall be entitled to recoup from Labcorp any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Labcorp's books and records and to disagree with any calculations submitted by Labcorp or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Labcorp, or the effect of any such Unallowable Costs on the amount of such payments.

14. This Agreement is intended to be for the benefit of the Parties only.

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

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

17. 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 Maryland. 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.

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

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

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

21. This Agreement is binding on Labcorp's successors, transferees, heirs, and assigns.


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

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

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

THE UNITED STATES OF AMERICA

Dated: March 15, 2023

By:  Digitally signed by
SARAH MARQUARDT
Date: 2023.03.15
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Thomas F. Corcoran
Sarah A. Marquardt
Assistant United States Attorneys
District of Maryland

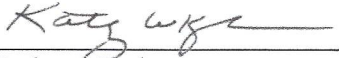
Dated: March 3, 2023

By: BERSHOK.RHONDA
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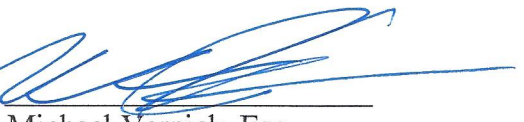
Rhonda Bershok
Chief, Acquisition Fraud Remedies
Office of General Counsel
Defense Health Agency

LABORATORY CORPORATION OF AMERICA

Dated: 03/08/2023


By: 
Kathryn Kyle
Senior Vice President & Assistant Secretary
Laboratory Corporation of America

Dated: 3/9/2023

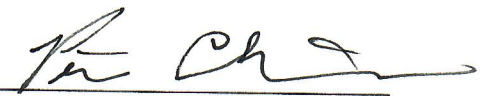
By: 
Michael Vernick, Esq.
Akin, Gump, Strauss, Hauer and Feld, LLP
Counsel for Laboratory Corporation of America, Inc.

RELATOR DONNA HECKER-GROSS

Dated: 3/8/2023

By: 
Donna Hecker-Gross
Relator

Dated: 3/8/23

By: 
Peter Chatfield, Esq.
Phillips and Cohen, LLP
Counsel for Donna Hecker-Gross