

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 United States Department of Health and Human Services (“HHS”), Philips RS North America LLC, f/k/a Respironics, Inc. (“Respironics”), and Craig Meyer (“Relator”), through their authorized representatives. Hereafter, the United States, Respironics, and Relator are collectively referred to as “the Parties.”

RECITALS

A. Respironics is a Pennsylvania corporation whose principal place of business is in Pittsburgh, Pennsylvania. Respironics provides various health goods and services, including manufacturing and selling positive airway pressure machines and related supplies that are designed to treat sleep-related respiratory disorders (e.g. sleep apnea) (“Sleep and Respiratory Therapy Products”). Respironics Sleep and Respiratory Products are characterized as durable medical equipment (“DME”) by Federal health care programs such as Medicare and are prescribed by licensed professionals, such as treating physicians. The United States pays for Sleep and Respiratory Therapy Products on behalf of beneficiaries who have health coverage through federally funded health care programs such as Medicare and Medicaid.

B. On February 19, 2017, Relator filed a *qui tam* action in the United States District Court for the Northern District of Iowa, captioned *United States ex rel. Meyer v. Respironics, et al.*, Case No. 17-cv-12-LTS-KEM, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §3730(b) (“the Civil Action”). Relator alleged, among other things, that Respironics facilitated interest-free loans for the financing and purchase of Sleep and Respiratory Therapy Products by DME suppliers, acquired from financial entities, in order to improperly induce DME suppliers to recommend and provide Respironics Sleep and Respiratory Therapy Products to

beneficiaries of federal health care programs in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). The United States shall be intervening in the Civil Action contemporaneously with the execution of this Settlement Agreement to effectuate this Settlement Agreement and dismissal of the Civil Action.

C. The United States contends that Respiroics submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”), and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

D. The United States contends that it has certain civil claims against Respiroics arising from claims submitted to Medicare and Medicaid by a DME supplier that were tainted by an unlawful arrangement between or involving Respiroics and a DME supplier in violation of the Anti-Kickback Statute, 42 U.S.C. §1320a-7b(b). Specifically, the United States contends that Respiroics caused a DME supplier’s submission of unlawful claims from December 18, 2015, through December 18, 2016, by providing remuneration to induce referrals of Respiroics-brand Sleep and Respiratory Therapy Products when such remuneration took the form of a fully guaranteed, interest-free, 12-month loan that Respiroics helped procure for a DME supplier from a financial institution in which the full guarantee allowed the financial institution to look to Respiroics to bear the full financial risk of non-collection on the loan in the event the DME supplier defaulted on the loan. The United States contends the Medicare and Medicaid claims submitted by a DME supplier during this period related to that fully guaranteed loan agreement violated the Anti-Kickback Statute and, in turn, the False Claims Act. This conduct is referred to below as the “Covered Conduct.”

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

United States' allegations set forth in Paragraph D above and denies that Respiroics has engaged in any wrongful conduct.

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. Respiroics shall pay to the United States the sum of One Million Two Hundred and Eighty-Three Thousand Eight Hundred Twenty-Five Dollars and Forty Cents (\$1,283,825.40) (Settlement Amount), of which \$641,912.50 is restitution (of which \$563,834 is restitution for Medicare and \$78,078 is restitution for the federal share of Medicaid), no later than thirty (30) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Northern District of Iowa.

2. Conditioned upon the United States receiving the Settlement Amount from Respiroics and as soon as feasible after receipt, the United States shall pay \$211,831.19 to Relator by electronic funds transfer (Relator's Share).

3. Respiroics shall pay to legal counsel for the Relator within thirty (30) days of the Effective Date of this Agreement the sum of \$35,586.50 for Relator's attorneys' reasonable expenses, fees and costs under subsection 3730(d) ("Attorney's Fee Payment"), pursuant to written instructions provided by counsel for the Relator.

4. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases

Respironics, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, and the corporate successors or assigns, 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, disgorgement of illegal profits, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 7 below, and conditioned upon Respironics' full payment to the United States' of the Settlement Amount and full payment of the Attorney's Fee Payment, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Respironics, together with each of its past, present and future directors, officers, managers, members, employees, partners, principals, agents, insurers, shareholders, attorneys, accountants, independent contractors, auditors, advisors, consultants, predecessors, successors, parents, subsidiaries, divisions, assigns, joint ventures and joint venturers, related or affiliated entities, and all others acting on its or their behalf, and the corporate successors or assigns of any of them, 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. In consideration of the obligations of Respironics in this Agreement and the [JCD Corporate Integrity Agreement \(CIA\)](#) entered into between OIG-HHS and Respironics simultaneously with this agreement, and conditioned upon the United States' receipt of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Respironics under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except

as reserved in this Paragraph and in Paragraph 7 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Respironics from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 7, below.

7. Notwithstanding the releases given in paragraphs 4, 5, and 6 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 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;

8. 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, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

9. Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Respiroics, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action.

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

12. Respiroics fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Respiroics 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. 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 payer, related to the Covered Conduct; and Respiroics agrees not to resubmit to any Medicare contractor 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.

14. Respiroics 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. §§ 1395-1395III-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Respiroics, 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 of the matters covered by this Agreement;
- (3) Respiroics'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;

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

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in paragraph 14.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Respironics.

b. Future Treatment of Unallowable Costs: Unallowable Costs, as applicable, shall be separately determined and accounted for by Respironics, and Respironics 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 Respironics or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Respironics further agrees that within 90 days of the Effective Date of this Agreement it shall as applicable 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 Respiroics 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. Respiroics agrees that the United States, at a minimum, shall be entitled to recoup from Respiroics 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 Respiroics or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Respiroics 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 Respiroics' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. 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 16 (waiver for beneficiaries paragraph), below.

16. Respiroics 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.

17. 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 Motion for Dismissal of the Civil Action pursuant to Rule 41(a)(1). The dismissal shall effectuate the dismissal of the Civil Action against Respiroics on behalf of the Relator and the United States pursuant to 31 U.S.C. § 3729 with prejudice as to the Relator and with prejudice as to the United States as to the Covered Conduct, but otherwise without prejudice to the United States.

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

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

20. 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 Northern District of Iowa. 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.

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

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

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

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

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

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

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

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
MATTHEW K. GILLESPIE
Assistant United States Attorney
Northern District of Iowa

DATED: 8/30/2022


BY: LISA M. RE / RMP
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

PHILIPS RS NORTH AMERICA LLC - DEFENDANT

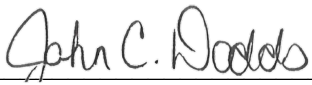
DATED: 8/22/2022

BY: 
DAVID FERGUSON, President & CEO
Philips RS North America LLC

DATED: 8/22/2022

BY: 
STUART CASHMAN, Vice President & Treasurer
Philips RS North America LLC

DATED: 8/16/22

BY: 
JOHN C. DODDS
Counsel for Philips RS North America LLC

CRAIG MEYER - RELATOR

DATED: _____

BY: _____
CRAIG MEYER

DATED: _____

BY: _____
MICHAEL BRADY
SARA BILLEW
Counsel for Craig Meyer

PHILIPS RS NORTH AMERICA LLC - DEFENDANT

DATED: _____

BY: _____

DAVID FERGUSON, President & CEO
Philips RS North America LLC

DATED: _____

BY: _____

STUART CASHMAN, Vice President & Treasurer
Philips RS North America LLC

DATED: _____

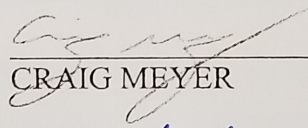
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JOHN C. DODDS
Counsel for Philips RS North America LLC

CRAIG MEYER - RELATOR

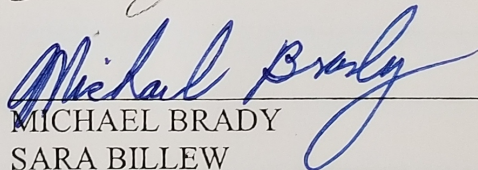
DATED: 8/25/2022 _____

BY: _____


CRAIG MEYER

DATED: 8/26/22

BY: _____


MICHAEL BRADY
SARA BILLEW
Counsel for Craig Meyer