

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney’s Office for the Northern District of Illinois (collectively the “United States”); Medline Industries, Inc. and The Medline Foundation (collectively “Medline”); and Sean Mason (the “Relator”), through their authorized representatives. Collectively, all of the above will be referred to as “the Parties.”

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Medline Industries, Inc. is an Illinois corporation headquartered in Mundelein, Illinois. It manufactures and sells medical supplies. The Medline Foundation is a not-for-profit organization headquartered in Mundelein, Illinois.

B. Relator is an individual resident of the State of Illinois. On October 4, 2007, Relator filed a *qui tam* action in the United States District Court for the Northern District of Illinois captioned *United States of America & State of Illinois ex rel. Sean Mason v. Medline Industries, Inc. and The Medline Foundation*, Civil Action No. 1:07-cv-05615. Relator filed an Amended Complaint on March 13, 2009, and a Second Amended Complaint on December 8, 2009. (This litigation is hereafter referred to as the “Civil Action.”)

C. Relator contends that Medline submitted or caused to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, and to the Medicaid Program, 42 U.S.C. §§ 1396-1396v.

D. Relator contends that he has certain civil claims, as specified in Section III, Paragraph 2, below, against Medline for engaging in the following conduct during the period from October 4, 2001 through May 31, 2010 (hereinafter referred to as the “Covered Conduct”):

Medline caused health care providers who are identified in the Second Amended Complaint and/or who submitted annual cost report(s), such as Forms 2552 (Hospital), 2540 (Skilled Nursing Facility), 1984 (Hospice), 1728 (Home Health Agency) and 256 (Renal Facility), under Medicare Part A or Medicaid (collectively, "Providers") to submit claims to the Medicare and Medicaid programs that were false because Medline unlawfully offered or paid remuneration to induce Providers to purchase, lease or order goods, items or supplies, or to reward Providers for the purchase, lease or order of goods, items or supplies, from Medline for which payment was made in whole or in part under Medicare and/or the federal portion of Medicaid; and/or because Medline unlawfully offered or paid remuneration to persons to induce them to arrange for or recommend, or reward them for arranging or recommending, the purchase, lease or order of goods, items or supplies, from Medline for which payment was made in whole or in part under Medicare and/or the federal portion of Medicaid, in that:

- (1) Medline offered and/or provided remuneration to Providers in the form of improper discounts, rebates and/or loans in various forms that did not conform to the discount "safe harbor" to the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), including but not limited to (i) rebates without fixed terms or required documentation; (ii) advance rebates ("prebates"); (iii) rebates sent to related or affiliated entities rather than to the Providers themselves; (iv) rebates provided as credits to outstanding balances; and (v) rebates paid through provision of supplies or equipment;
- (2) Medline provided remuneration in the form of impermissible charitable donations to Providers and their related entities to induce purchases from Medline;
- (3) Medline provided remuneration in the form of payments to Providers in connection with programs referred to as "consignment," "Access" or "Access 90" programs (in which Medline loaned money to Providers or purchased some or all

of a Provider's existing inventory of products, with the understanding that the Provider would buy back that inventory when it used the products or when it ceased purchasing the products from Medline) to induce Providers to purchase from Medline; and

- (4) Medline directly or indirectly provided remuneration in the form of cash, recruitment or employment of family members, and illegal gifts and/or entertainment, to Providers' officials, employees and/or affiliates or to others in a position to influence the Providers.

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.

F. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of facts or liability by Medline nor a concession by the Relator that his claims are not well founded. Medline expressly denies the allegations set forth herein and in the Complaint, the Amended Complaint and the Second Amended Complaint and denies that it has engaged in any wrongful conduct. Neither this Agreement, its execution, nor the performance of any obligation under it, including any payment, nor the fact of settlement, are intended to be, or shall be understood as, an admission of liability or wrongdoing, or other expression reflecting on the merits of the dispute by Medline.

G. To avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Medline agrees to pay to the United States the sum of \$85,000,000.00 (eighty-five million dollars and no/cents) (the "Settlement Amount"). This payment shall be made as follows:

a. Medline agrees to pay the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States. Medline agrees to make this electronic funds transfer no later than ten (10) business days after the Effective Date of this Agreement.

b. Contingent upon the United States receiving the Settlement Amount from Medline, the United States agrees to pay, as soon as feasible after receipt, \$23,375,000 (twenty three million, three hundred and seventy five thousand dollars and no/cents) ("Relator's Share") as the Relator's share of the proceeds pursuant to 31 U.S.C. § 3130(d) to Milberg LLP IOLA. No other relator payment(s) of any sort shall be made by the United States to the Relator with respect to the matters covered by this Agreement.

c. Medline agrees to pay a total of \$6 million (six million dollars and no/cents) for Relator's attorneys' fees and costs to the law firms appearing as signatories to this Agreement as representing Relator (collectively, "Relator's Counsel") by electronic funds transfer pursuant to written instructions to be provided by the Relator's Counsel. Medline agrees to make this electronic funds transfer no later than ten (10) business days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4, below, in consideration of the obligations of Medline in this Agreement, conditioned upon Medline's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Medline, together with Medline's predecessors, direct and indirect

subsidiaries, brother or sister entities, divisions, transferees, successors and assigns (hereinafter, collectively "Medline Releasees") from any civil or administrative monetary claim the United States has or may have 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; any statutory provision for which the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, Section 0.45(D); or the common law theories of payment by mistake, unjust enrichment, disgorgement, and fraud for the Covered Conduct.

3. In consideration of the obligations of Medline in this Agreement, and conditioned upon Medline's full payment of the Settlement Amount, the Relator, for himself and his heirs, successors, attorneys, agents, and assigns, fully and finally releases the Medline Releasees and their individual officers, shareholders, directors, agents and employees from any claim the Relator has, may have or could have asserted, and from all liability, claims, demands, actions or causes of action whatsoever existing as of the Effective Date of this Agreement, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal or state statute or regulation or that they or their heirs, successors, attorneys, agents and assigns asserted or could have asserted in the Civil Action. Conditioned upon receipt of payment for attorney's fees and costs in the amounts set forth in Paragraph 1.c, the Relator and the Relator's Counsel, for themselves and for their heirs, successors, agents, and assigns, agree to release the Medline Releasees from any claims they might assert under 31 U.S.C. § 3730(d), for expenses, attorneys' fees, and costs incurred in connection with the Civil Action. The Relator and the Relator's Counsel represent that they are aware of no other person, attorney or law firm that is asserting or has asserted any claims under 31 USC 3730(d) or otherwise for attorneys' fees, costs and expenses relating to the Civil Action.

4. Notwithstanding any term of this Agreement, the following claims of the United States are specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Medline and the Relator):

- a. Any civil, criminal, or administrative 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 such obligations as are created by this Agreement;
 - f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
 - g. Any liability for failure to deliver goods or services due;
 - h. Any liability of individuals, including directors, officers, and employees;
- and
- i. Any liability of any entity(ies) other than Medline and the Medline Releasees.

5. Relator and his heirs, successors, attorneys, agents, and assigns, including Relator's Counsel, agree not to object to this Agreement and 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), and, conditioned upon the United States' payment of the Relator's Share, as set forth in Paragraph 1.b, above, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives and discharges the United States and its agencies, officers, agents, employees, and servants from any claims arising from or relating to 31 U.S.C. § 3730; from any claims arising from the filing of the Civil Action; and from any other claims for a share of the Settlement Amount or payment of any sort from the United States relating to the Settlement Agreement or the filing of the Civil Action; and in full settlement of any claims the Relator may have under this Agreement. This Agreement does not resolve or in

any manner affect any claims the United States has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

6. Medline waives and shall not assert any defenses Medline 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.

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

8. In consideration of the obligations of the Relator in this Agreement, Medline and its predecessors, shareholders, direct and indirect subsidiaries, brother or sister entities, divisions, transferees, successors, assigns, attorneys, and its individual officers, shareholders, directors, agents and employees, fully and finally release, waive and forever discharge the Relator and his respective heirs, successors, assigns, agents and attorneys from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) or allegations that Medline or such other entities and persons have asserted, could have asserted, or may assert in the future arising from the Covered Conduct or related to the initiation, investigation, and/or prosecution of the Civil Action by Relator and his attorneys, and further release the Relator from all liability, claims, demands, and causes of action whatsoever existing as of the Effective Date of this Agreement, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal or state statute or regulation and under common law.

9. 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 carrier or intermediary or any State payer, related to the Covered Conduct; and, if applicable, Medline agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

10. Medline agrees to the following:

a. Unallowable Costs Defined: That 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. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Medline and its current or former direct and indirect subsidiaries, brother or sister corporations, divisions, affiliates, officers, directors, employees, shareholders, and agents, and the predecessors in connection with the following shall be “Unallowable Costs” on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- i. the matters covered by this Agreement;
- ii. the United States’ audit(s) and civil investigation(s) of the matters covered by this Agreement;
- iii. Medline’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);
- iv. the negotiation and performance of this Agreement; and
- v. the payment Medline makes to the United States pursuant to this Agreement and any payments that Medline may make to the Relator, including costs and attorneys’ fees.

(All costs described or set forth in this paragraph 11.a. are hereafter “Unallowable Costs”.)

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

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

11. 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 above or in Paragraph 12 (waiver for beneficiaries paragraph) below.

12. Medline 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.

13. Medline warrants that it has reviewed its financial situation and that it currently 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. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Medline, within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended as, and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Medline was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

14. Upon receipt of the payments described in Paragraph 1, above, Relator and Medline shall promptly sign and file a Joint Stipulation of Dismissal of the Second Amended Complaint pursuant to the terms and conditions of this Agreement with prejudice. The United States shall at the same time file a consent to the dismissal of the Second Amended Complaint with prejudice as to the Covered Conduct.

15. Except as expressly provided to the contrary in this Agreement, 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. Medline represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

17. Relator represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

18. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the Northern District of Illinois.

19. For purposes of construction, 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 individual(s) signing this Agreement on behalf of Medline represent and warrant that they are authorized by Medline to execute this Agreement. The individual(s) signing this Agreement on behalf of the Relator represent and warrant that they are authorized by the Relator to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

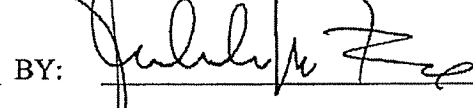
22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

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

24. All parties consent to the disclosure of this Agreement, and information about this Agreement, and about the Civil Action, to the public.

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

THE UNITED STATES OF AMERICA
PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

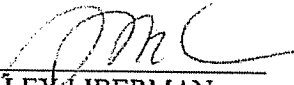
Dated: 3/10/2011 BY: 


MICHELE M. FOX
Assistant United States Attorney
Northern District of Illinois

Dated: 3/10/2011 BY: 

PATRICIA L. HANOWER
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

MEDLINE

Dated: 3-10-11 BY: 
ALEX LIBERMAN
General Counsel
Medline Industries, Inc.

Dated: 3-10-11 BY: 
ALEX LIBERMAN
General Counsel
The Medline Foundation

RELATOR SEAN MASON

Dated: 3-9-11 BY: Sean H. Mason
SEAN MASON

Dated: 3-9-11 BY: Robert A. Clifford
Robert A. Clifford
Courtney A. Maritscin
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Dated: 3-9-11 BY: C. Barry Montgomery
C. Barry Montgomery
Edward Roy Moor
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Dated: 3/9/11 BY: Kirk E. Chapman
Kirk E. Chapman
Ross B. Brooks
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