

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”); the Defense Health Agency (“DHA”) for the TRICARE program, and the United States Department of Veterans Affairs (“VA”) (collectively the “United States”), CareFusion Corporation (“CareFusion”), and Cynthia Kirk (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. CareFusion is a global corporation with a principal place of business located in San Diego, California. In January 2009, CareFusion was formed as a wholly-owned subsidiary of Cardinal Health Inc. (“Cardinal Health”) and, on August 31, 2009, Cardinal Health completed the spinoff of its clinical and medical products business into CareFusion. On September 1, 2009, CareFusion began trading as a separate public company on the New York Stock Exchange.

B. At all relevant times, CareFusion or its predecessor-in-interest Cardinal Health manufactured, sold, and marketed a drug under the trade name ChloroPrep, which is an antiseptic that is applied to a patient’s skin prior to surgery or injection.

C. On September 9, 2010, Cynthia Kirk filed a *qui tam* action in the United States District Court for the District of Kansas under the caption *United States ex rel. Kirk v. CareFusion Corporation, et al.*, Civil Action No. 10-2492, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b). On November 10, 2010,

Cynthia Kirk filed a *qui tam* action in the United States District Court for the District of Kansas captioned *United States ex rel. Kirk v. CareFusion Corporation, et al.*, Civil Action No. 10-2611. The two *qui tam* actions will be referred to collectively as the “Civil Actions.”

D. CareFusion has entered into or will be entering into separate settlement agreements (hereinafter referred to as the “Medicaid State Settlement Agreements”) with certain States, Commonwealths, and the District of Columbia in settlement of the Covered Conduct, as defined in the Medicaid State Settlement Agreements. States with which CareFusion executes a Medicaid State Settlement Agreement in the form to which CareFusion and the National Association of Medicaid Fraud Control Units (“NAMFCU”) Negotiating Team have agreed, or in a form otherwise agreed to by CareFusion and an individual State, shall be defined as the “Medicaid Participating States.”

E. The United States contends that CareFusion submitted or caused to be submitted claims for payment for ChloroPrep to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1; the Medicaid Program (“Medicaid”), 42 U.S.C. §§ 1396-1396w-5; the TRICARE Program, 10 U.S.C. §§ 1071-1110a; and that CareFusion caused the VA to purchase ChloroPrep (Medicare, Medicaid, the TRICARE program, and the VA are collectively referred to as “the Federal Health Care Programs”).

F. The United States contends that it and the Medicaid Participating States have certain civil claims against CareFusion for engaging in the following conduct during the time period July 1, 2008, through August 31, 2011 (hereinafter referred to as the Covered Conduct):

(i) In July 2008 and October 2008, two wholly-owned subsidiaries of Cardinal Health entered into agreements with an organization called Health Care Concepts, Inc. ("HCC"). Under a July 1, 2008 "Master Solutions Accelerator Agreement," Cardinal Health 200, Inc. agreed to pay \$9.1 million to HCC for certain software development, strategic marketing, and consulting services. Under an October 1, 2008 "Research Grant Agreement," Cardinal Health 303, Inc. agreed to pay \$2.5 million to HCC for the completion of three enumerated projects. The United States contends that the compensation for the underlying services in these agreements was not fair market value, the terms of the deliverables in the agreements were not enforced consistent with their terms, and one purpose of these agreements was to conceal kickbacks to Dr. Charles Denham, the owner and operator of HCC.

In connection with the spinoff of CareFusion from Cardinal Health, Inc., CareFusion assumed legal, and, in the case of the July 2008 agreement, financial responsibility for the agreements entered into by its predecessors-in-interest. CareFusion made payments to HCC while Dr. Denham served as the co-chair of the Safe Practices Committee at the National Quality Forum, which reviews, endorses and recommends standardized healthcare performance measures and practices. The United States contends that CareFusion's payments to HCC were made for the purpose of influencing Dr. Denham's work as co-chair of the Safe Practices Committee and for the purpose of inducing Dr. Denham to recommend, promote and/or arrange for the purchase of CareFusion's product, ChloroPrep, in violation of the Federal Anti-Kickback Statute.

(ii) In addition, Relator alleges that during the period September 2009 through August 2011, CareFusion knowingly (1) promoted the sale of ChloroPrep products for uses that were not approved by the Food and Drug Administration ("FDA"), some of which were not medically accepted indications; and (2) made and/or disseminated unsubstantiated representations about the use of ChloroPrep products.

As a result of the foregoing conduct, the United States contends that CareFusion submitted and/or caused to be submitted false or fraudulent claims for ChloroPrep, or caused purchases by Medicare, Medicaid and the other Federal Health Care Programs,

and that this conduct gave rise to civil liability under the False Claims Act, 31 U.S.C. §§ 3729 - 3733 and/or the common law.

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

H. 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. CareFusion agrees to pay to the United States and the Medicaid Participating States, collectively, the sum of \$40,100,000 (Settlement Amount) plus accrued interest on the Settlement Amount at an interest rate of 1.5% per annum from May 3, 2013, and continuing until and including the day before payment is made under this Agreement. The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of this Agreement. This debt shall be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) CareFusion shall pay to the United States the sum of \$32,049,320 plus accrued interest at a rate of 1.5% per annum from May 3, 2013, and continuing until and including the day before complete payment is made (the "Federal Settlement Amount"). The Federal Settlement Amount shall be paid by electronic funds transfer

pursuant to written instructions from the United States no later than seven (7) business days after this Agreement is fully executed by the Parties and delivered to CareFusion's attorneys.

(b) CareFusion shall pay to the Medicaid Participating States the sum of \$8,050,680 plus accrued interest at a rate of 1.5% per annum from May 3, 2013, continuing until and including the day before complete payment is made ("Medicaid State Settlement Amount"). The Medicaid State Settlement Amount shall be paid no later than seven (7) business days after this Agreement is fully executed by the Parties and delivered to CareFusion's attorneys. The Medicaid State Settlement Amount shall be paid by electronic funds transfer to an interest bearing account pursuant to written instructions from the NAMFCU Negotiating Team and under the terms and conditions of the Medicaid State Settlement Agreements that CareFusion will enter into with the Medicaid Participating States.

2. CareFusion agrees to pay Relator's reasonable attorney's fees and costs in the amount of \$592,438.51 incurred in connection with the Civil Action to Relator's counsel by electronic funds transfer pursuant to a separate, written agreement between CareFusion and Relator and Relator's Attorneys (Attorneys' Fees and Costs Agreement).

3. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon CareFusion's full payment of the Settlement Amount, the United States releases CareFusion, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, and divisions, and its and their officers, directors, managers, and employees from any civil or administrative monetary claim the United States has for the Covered Conduct under the

False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud. For the avoidance of doubt, CareFusion represents that Dr. Charles Denham was not an employee of CareFusion or any current or former affiliate thereof, and the term “employees” as used in this Paragraph does not include Dr. Charles Denham.

4. Subject to the exceptions in Paragraph 7 below, and conditioned upon CareFusion’s full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases CareFusion, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, and divisions, and its and their officers, directors, and managers, 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, or any similar statute.

5. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against CareFusion and/or its officers, directors, and employees from Medicare, Medicaid, and all other 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) or 42 U.S.C. § 1320a-7a (permissive exclusion).

6. In consideration of the obligations of CareFusion set forth in this Agreement, conditioned upon CareFusion’s full payment of the Settlement Amount, DHA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against CareFusion,

its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, or divisions, and its and their officers, directors, and managers, under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 7 (concerning excluded claims), below, and as reserved in this Paragraph. DHA expressly reserves authority to exclude CareFusion, its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, and divisions, from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii), based upon the Covered Conduct. Nothing in this Paragraph precludes DHA or the TRICARE Program 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 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;

- f. Any liability 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 for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- i. Any liability of individuals other than those specifically released in Paragraph 3.

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) and that the Settlement Amounts for each individual claim are also fair, adequate, and reasonable under the circumstances. In connection with this Agreement and the Civil Action, Relator and her heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relator from sharing in the proceeds of this Agreement. Moreover, the United States and Relator and his/her heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of her claims and that no agreements concerning Relator share have been reached to date.

9. Relator for herself, and for her heirs, successors, attorneys, agents, and assigns, releases CareFusion, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, and divisions, and its and their officers, directors, managers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

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

11. CareFusion 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 CareFusion 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. In consideration of the obligations of the Relator set forth in this Agreement, CareFusion, on behalf of itself, its predecessors, and its current and former

divisions, parents, subsidiaries, agents, successors, assigns, and their current and former directors, officers and employees, fully and finally releases, waives and forever discharges the Relator and her respective heirs, successors, assigns, agents, and attorneys from any claims or allegations CareFusion could have asserted or may assert in the future against Relator.

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), TRICARE, or any state payer, related to the Covered Conduct; and CareFusion agrees not to resubmit to any Medicare contractor, TRICARE, or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

14. CareFusion agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of CareFusion, 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 and any criminal investigation(s) of the matters covered by this Agreement;
- (3) CareFusion's investigation, defense, and corrective

actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement; and

(5) the payment CareFusion makes to the United States pursuant to this Agreement and any payments that CareFusion may make to Relator, including costs and attorney's fees;

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP") (hereinafter referred to as "Unallowable Costs").

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: CareFusion further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries,

carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by CareFusion 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. CareFusion agrees that the United States, at a minimum, shall be entitled to recoup from CareFusion 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 CareFusion or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on CareFusion 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 CareFusion's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. CareFusion agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement for a period of

twelve months following execution of this Agreement. Upon reasonable notice during such period, CareFusion shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use good faith 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. CareFusion further agrees to furnish to the United States during such period, upon request, factual non-privileged information contained in 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.

16. 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 17 (waiver for beneficiaries paragraph), below.

17. CareFusion 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.

18. After this Agreement is executed and the Settlement Amount is paid by CareFusion to the United States in accordance with Paragraph 1 of this Agreement, the Parties shall: (a) promptly sign and file a Joint Stipulation of Dismissal of all claims against CareFusion that are asserted in *U.S. ex rel. Kirk v. CareFusion*, No. 10-2492 pursuant to Federal Rule of Civil Procedure 41(a)(1); such dismissal shall be with prejudice as to all claims asserted by Relator against CareFusion, and without prejudice

as to the United States, except with respect to claims for the Covered Conduct, which shall be dismissed with prejudice; and (b) promptly sign and file a Joint Stipulation of Dismissal of all claims against CareFusion that are asserted in *U.S. ex rel. Kirk v. CareFusion*, No. 10-2611 (D. Kan.) pursuant to Rule 41(a)(1); such dismissal shall be with prejudice as to all claims asserted by Relator against CareFusion and without prejudice as to the United States.

19. Except as provided in Paragraph 2, each party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

20. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

21. 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 Kansas. 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.

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

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

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

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

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

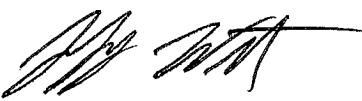
27. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

28. 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

1/7/2014

DATED:

BY: 

JEFFREY WERTKIN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED:

BY: _____

JON FLEENOR
Assistant United States Attorney
District of Kansas

DATED: _____

BY: _____

ROBERT K. DECONTI
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

DATED: _____

BY: _____

PAUL J. HUTTER
General Counsel
Defense Health Agency
United States Department
of Defense

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

JEFFREY WERTKIN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 1/2/2014

BY: _____


JON FLEENOR
Assistant United States Attorney
District of Kansas

DATED: _____

BY: _____

ROBERT K. DECONTI
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

DATED: _____

BY: _____

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United States Department
of Defense

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DATED:

BY: _____

JEFFREY WERTKIN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED:

BY: _____

JON FLEENOR
Assistant United States Attorney
District of Kansas

DATED: 1/3/14

BY: _____

Robert K. DeConti
ROBERT K. DECONTI
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

DATED: _____

BY: _____

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United States Department
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THE UNITED STATES OF AMERICA

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United States Department of Justice

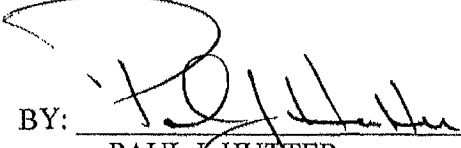
DATED:

BY: _____
JON FLEENOR
Assistant United States Attorney
District of Kansas

DATED: _____

BY: _____
ROBERT K. DECONTI
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

DATED: 1/6/14

BY: 

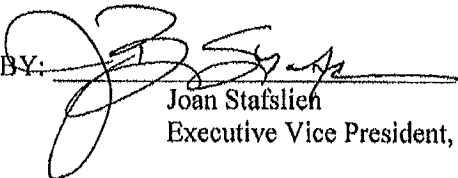
PAUL J. HUTTER
General Counsel
Defense Health Agency
United States Department
of Defense

RELATOR CYNTHIA KIRK

DATED: 3/6/2014 BY: Cynthia Kirk
Cynthia Kirk

DATED: 1.7.14 BY: Carrie Brous
Carrie Brous
Counsel for Relator

CAREFUSION CORPORATION

DATED: 1/7/14 BY: 
Joan Stafslieh
Executive Vice President, General Counsel

DATED: _____ BY: _____
Karen P. Hewitt
Jones Day
Counsel for CareFusion Corporation

DATED: _____ BY: _____
Timothy M. McCrystal
Ropes & Gray LLP
Counsel for CareFusion Corporation

DATED: _____ BY: _____
Jeffrey N. Gibbs
Hyman, Phelps & McNamara, PC
Counsel for CareFusion Corporation

CAREFUSION CORPORATION

DATED: _____ BY: _____
Joan Staffslien
Executive Vice President, General Counsel

DATED: 1/17/14 BY: Karen P. Hewitt
Karen P. Hewitt
Jones Day
Counsel for CareFusion Corporation

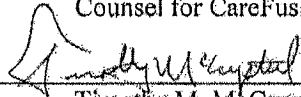
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
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Karen P. Hewitt
Jones Day
Counsel for CareFusion Corporation

DATED: _____ BY: _____
Timothy M. McCrystal
Ropes & Gray LLP
Counsel for CareFusion Corporation

DATED: 1/27/19 BY:  
Jeffrey N. Gibbs
Hyman, Phelps & McNamara, PC
Counsel for CareFusion Corporation