

## 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 on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the “United States”); Sandra J. Clarke (“Clarke”); Kim Politsky (“Politsky”); Diabetes Self Care, Inc. (“DSC”); and Matria Women’s and Children’s Health LLC, formerly known as Matria Healthcare, Inc. (“Matria”) (hereafter referred to as “the Parties”), through their authorized representatives.

### II. PREAMBLE

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

- A. Matria is a corporation with a principal place of business in Marietta, Georgia.
- B. DSC is a wholly owned subsidiary of Matria. DSC was formerly in the business *inter alia* of providing durable medical equipment including blood glucose monitors and associated blood glucose testing strips.
- C. Clarke is an individual resident of the State of Virginia. On October 31, 2002, Clarke filed a qui tam action in the United States District Court for the Western District of Virginia, Roanoke Division, captioned *United States ex rel. Sandra J. Clarke v. Diabetes Self*

*Care and Matria Corporation*, No. 7:02CV01168 (W.D. Va.) (hereinafter the “*Clarke Qui Tam*”). Clarke worked at DSC from 1996-2002.

D. Politsky is an individual resident of the State of Georgia. On August 15, 2003, Politsky filed a qui tam action in the United States District Court for the Southern District of Georgia, Augusta Division, captioned *United States ex rel. Kim Politsky v. Matria Healthcare, Inc. and Diabetes Self Care, Inc.*, No. CV103-125 (S.D. Ga.) (hereinafter the “*Politsky Qui Tam*”).

E. The United States contends that DSC and Matria 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.

F. The United States contends that it has certain civil claims, as specified in Paragraph 2 below, against DSC and/or Matria for engaging in the following conduct during the period from January 1, 1998 to December 31, 2003: (1) billing or causing to be billed to the Medicare program claims for Durable Medical Equipment (DME) prior to obtaining a valid Physician Order, a valid Assignment of Benefits (AOB) and/or valid Certificate of Medical Necessity (CMN); (2) failing to credit the Medicare program for returned DME; (3) billing or causing Medicare to be billed for the shipment of duplicate orders of DME, over-shipped or under-shipped quantities of DME, or un-ordered DME; (4) billing or causing Medicare to be billed for the shipment of quantities of DME exceeding the utilization guidelines without the required documentation; (5) falsely representing the cost of a beneficiary’s payment obligation related to the shipment of DME; (6) failing to maintain required signature logs related to the shipment of DME as required by Medicare or state Medicaid programs; (7) falsely creating or

altering documentation supporting the shipment of DME; (8) improperly billing Medicare for blood glucose meters; (9) failing to charge beneficiaries for deductibles or co-pays or waiving beneficiaries' co-pays; (10) falsifying or changing dates of service, dates of shipment or dates of request related to the shipment of DME; (11) failing to maintain proofs of delivery; (12) billing Medicare for DME shipped from an Irvine, California facility that did not have its own Medicare supplier number; (13) falsely representing to the Georgia Medicaid program that DSC was eligible to participate in the Georgia Medicaid program; (14) falsely representing to the North Carolina Medicaid program that DSC was eligible to participate in the North Carolina Medicaid program; (15) falsely representing to the Mississippi Medicaid program that DSC was eligible to participate in the Mississippi Medicaid program; and (16) falsely representing to the Indiana Medicaid program that DSC was eligible to participate in the Indiana Medicaid program (hereinafter referred to as the "Covered Conduct").

G. The United States also contends that it has certain administrative claims, as specified in Paragraph 2 below, against DSC and Matria for engaging in the Covered Conduct.

H. This Agreement is neither an admission of liability by DSC and/or Matria nor a concession by the United States that its claims are not well founded.

I. 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

1. DSC and Matria jointly and severally agree to pay to the United States \$9,000,000 (the "Settlement Amount"). The United States agrees to pay \$1,188,000 of the Settlement Amount to Clarke, and \$792,000 of the Settlement Amount to Politsky. The foregoing payments shall be made as follows:

a. DSC and Matria agree to pay the full Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by Trial Attorney Alan S. Gale, Civil Division, Department of Justice. DSC and Matria jointly and severally agree to make this electronic funds transfer no later than the close of business on April 3, 2006.

b. Contingent upon the United States receiving the Settlement Amount from DSC and/or Matria and as soon as feasible after receipt, the United States agrees to pay \$1,188,000 to Clarke and \$792,000 to Politsky by electronic funds transfer.

2. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of DSC and Matria in this Agreement, conditioned upon DSC's and/or Matria's full payment of the Settlement Amount, and subject to Paragraph 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release DSC and Matria, their respective officers, directors, shareholders, employees, agents and assigns 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; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of DSC and Matria this Agreement, conditioned upon DSC's and Matria's full payment of the Settlement Amount, and subject to Paragraph 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), Clarke, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release DSC and Matria, their respective officers, directors, shareholders, employees, agents, and assigns from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

4. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of DSC and Matria this Agreement, conditioned upon DSC's and Matria's full payment of the Settlement Amount, and subject to Paragraph 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), Politsky, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release DSC and Matria, their respective officers, directors, shareholders, employees, agents and assigns from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against DSC or Matria, and/or their respective officers, directors, shareholders, employees, agents and assigns from Medicare, Medicaid, or 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) (permissive exclusion).

6. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including DSC, Matria, Clarke, and Politsky) are the following claims of the United States:

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; and

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.

7. Conditioned upon receipt of her relator's share, Clarke, for herself individually, and for her heirs, successors, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1), from any claims arising from the filing of the *Clarke Qui Tam*, and from any other claims for a share of the Settlement Amount, and in full settlement of any claims Clarke 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 Clarke arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

8. Conditioned upon receipt of her relator's share, Politsky, for herself individually, and for her heirs, successors, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1), from any claims arising from the filing of the *Politsky Qui Tam*, and from any other claims for a share of the Settlement Amount, and in full settlement of any claims Politsky 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 Politsky arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

9. DSC and Matria waive and shall not assert any defenses DSC or Matria 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.

10. DSC and Matria fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which DSC or Matria have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. 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 neither DSC nor Matria shall 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.

12. DSC and Matria agree 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 DSC or Matria, their present or former officers, directors, employees, shareholders, and agents 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):

- (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) DSC's and/or Matria'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, and
- (5) the payment DSC and/or Matria makes to the United States pursuant to this Agreement and any payments that DSC and/or Matria may make to relators, including costs and attorneys fees. (All costs described or set forth in this Paragraph 12.a. are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by DSC and Matria, and DSC and Matria 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 DSC or Matria or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

DSC and Matria further agree that within 90 days of the Effective Date of this Agreement they 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 DSC or Matria or any of their 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. DSC and Matria agree that the United States, at a minimum, shall be entitled to recoup from DSC and/or Matria 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 DSC or Matria or any of their subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on DSC's or Matria's or any of their 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 DSC's and/or Matria's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

13. 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 14 below.

14. DSC and Matria waive 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.

15. DSC and Matria warrant that they have reviewed their financial situations and that they currently are 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 DSC and Matria, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude 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 and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or

defraud any entity to which DSC or Matria were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. If within 91 days of the Effective Date of this Agreement or of any payment made hereunder, DSC or Matria commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of DSC's or Matria's debts, or seeking to adjudicate DSC or Matria as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for DSC or Matria or for all or any substantial part of DSC's or Matria's assets, DSC and Matria agree as follows:

a. DSC's and Matria's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and neither DSC nor Matria shall argue or otherwise take the position in any such case, proceeding, or action that: (i) DSC's or Matria's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) DSC and Matria were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to DSC and Matria.

b. If DSC's or Matria's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil or administrative claim, action, or proceeding against DSC or Matria for the claims that would otherwise be covered by the releases provided in Paragraph 2 above. DSC and Matria agree that: (i) any such claims, actions, or proceedings brought by the

United States (including any proceedings to exclude DSC and/or Matria from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that neither DSC nor Matria shall argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) DSC and Matria 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 claims, actions, or proceeding which are brought by the United States within 180 calendar days of written notification to DSC and/or Matria that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date; and (iii) the United States has a valid claim against DSC and/or Matria in the amount of \$10,200,000, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. DSC and Matria acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

17. 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.

18. DSC and Matria represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

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

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

21. 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 is the United States District Court for the Western District of Virginia, Roanoke Division.

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

23. No later than receipt of all settlement payments due and owing the United States and the relators arising from the referenced *qui tam* complaints, the United States and Clarke shall promptly sign and file in the *Clarke Qui Tam* a Notice of Intervention and a Joint Stipulation of Dismissal with prejudice pursuant to the terms of the Agreement in the United States District Court for the Western District of Virginia. No later than the receipt of all settlement payments due and owing the United States and the relators arising from the referenced *qui tam* complaints, the United States and the Politsky shall promptly sign and file in the *Politsky Qui Tam* a Notice of Intervention and a Joint Stipulation of Dismissal with prejudice pursuant to the terms of the Agreement in the United States District Court for the Southern District of Georgia.

24. The individuals signing this Agreement on behalf of DSC and Matria represent and warrant that they are authorized by DSC and Matria to execute this Agreement. The individual signing this Agreement on behalf of Clarke represents and warrants that he is authorized by Clarke to execute this Agreement. The individual signing this Agreement on

behalf of Politsky represents and warrants that he is authorized by Politsky 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.

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

26. This Agreement is binding on DSC's and Matria'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

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

ALAN S. GALE  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 3/6/06

BY:   
\_\_\_\_\_

JULIE C. DUDLEY  
Assistant United States Attorney  
Western District of Virginia

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

JIMMY COURSEY  
Assistant United States Attorney  
Southern District of Georgia


DATED: 3/3/06

BY:   
\_\_\_\_\_

GREGORY E. DEMSKE  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
United States Department of Health and Human  
Services

THE UNITED STATES OF AMERICA

DATED: 3-6-06

BY:   
ALAN S. GALE  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
JULIE C. DUDLEY  
Assistant United States Attorney  
Western District of Virginia

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
JIMMY COURSEY  
Assistant United States Attorney  
Southern District of Georgia

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
GREGORY E. DEMSKE  
Assistant Inspector General for  
Legal Affairs  
Office of Inspector General  
United States Department of Health and Human  
Services

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

ALAN S. GALE  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

JULIE C. DUDLEY  
Assistant United States Attorney  
Western District of Virginia

DATED: 2/28/06

BY: 

JAMES L. COURSEY, JR.  
Ga Bar No. 190602  
Assistant United States Attorney  
Southern District of Georgia

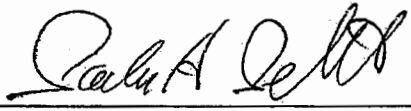
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GREGORY E. DEMSKE  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
United States Department of  
Health and Human Services

DIABETES SELF CARE, INC.

DATED: 3/3/06

BY:   
PARKER H. PETTIT  
President

DATED: 3/3/06

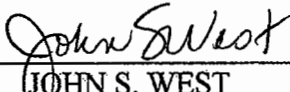
BY:   
JOHN S. WEST  
Troutman Sanders LLP  
Counsel for Diabetes Self Care, Inc.

MATRIA WOMEN'S & CHILDREN'S HEALTH LLC

DATED: 3/3/06

BY:   
PARKER H. PETIT  
Chairman

DATED: 3/3/06

BY:   
JOHN S. WEST  
Troutman Sanders LLP  
Counsel for Matria Healthcare, Inc.

SANDRA J. CLARKE

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
SANDRA J. CLARKE

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LON ENGEL  
Engel & Engel, P.A.  
Counsel for Sandra J. Clarke

**MATRIA WOMEN'S & CHILDREN'S HEALTH LLC**

DATED: \_\_\_\_\_

Chairman

BY: \_\_\_\_\_

PARKER H. PETTIT

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

JOHN S. WEST  
Troutman Sanders LLP  
Counsel for Matria Healthcare, Inc.

**SANDRA J. CLARKE**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

SANDRA J. CLARKE

DATED: 3-7-06

BY: \_\_\_\_\_

LON ENGEL  
Engel & Engel, P.A.  
Counsel for Sandra J. Clarke

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COV TEAM

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MATRIA WOMEN'S & CHILDREN'S HEALTH LLC

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Chairman

PARKER H. PETIT

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JOHN S. WEST  
Troutman Sanders LLP  
Counsel for Matria Healthcare, Inc.

SANDRA J. CLARKE

Formatted

DATED: 3/1/06

*SANDRA CLARKE*  
*Sandra Clarke*

BY: \_\_\_\_\_  
SANDRA J. CLARKE

DATED: \_\_\_\_\_ BY: \_\_\_\_\_

LON ENGEL  
Engel & Engel, P.A.  
Counsel for Sandra J. Clarke

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KIM POLITSKY

DATED: 3/1/2006

BY:   
KIM POLITSKY