

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ROCHE DIAGNOSTICS CORPORATION and
ROCHE DIABETES CARE, INC.,

Plaintiffs,

v.

PRIORITY HEALTHCARE CORPORATION
D/B/A PRIORITY CARE, ET AL.;

Defendants.

Case No. 2:18-cv-01479-KOB-HJN

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

On consent of Plaintiffs Roche Diagnostics Corporation and Roche Diabetes Care, Inc. (collectively, “Roche”), and Defendants Phillip Minga and Konie Minga (the “Mingas”); Wesley Minga, Kristen Knotts, Daniel Baker, and Heather Baker (the “Minga Children”); Priority Healthcare Corporation (“PHC” and, together with the entities listed in Footnote 1,¹ the “Corporate Defendants”); and Capital Asset Management, LLC, KJM Holdings, LLC, and Minga Investments, LLC (such entities collectively, the “Asset-Holder Defendants,” and, together with the Mingas, the Minga Children, and the Corporate Defendants, the “Defendants”), it is hereby ORDERED, ADJUDGED AND DECREED:

WHEREAS, on September 11, 2018, Roche filed the Complaint in this action, alleging that Defendants fraudulently submitted claims for rebates to be paid directly or indirectly by Roche for, and otherwise used in commerce in the United States, Accu-Chek® blood glucose test strips, all of which claims, Roche has alleged, have given rise to significant damages;

WHEREAS, on November 5, 2019, the Court found that four bank accounts—two SunTrust accounts in the name of KJM Holdings, LLC, a TD Ameritrade account in the name of Capital Asset Management, LLC, and an E*Trade Securities account in the name of Minga Investments, LLC—contained the proceeds of Defendants’ fraud against Roche and ordered the contents of those accounts to be deposited with the Clerk of Court, and the contents of the accounts (the “Fund”) are currently held in constructive trust for Roche in an interest-bearing account in the Registry Fund of the Treasury;

WHEREAS, the initial deposited amount of the Court Funds was \$43,331,950.55;

¹ The remaining Corporate Defendants are: Priority Care Pharmacy Solutions, LLC; Amory Discount Pharmacy, LLC; Priority Care Pharmacy 2, LLC; Vickers Priority Care Pharmacy, LLC; Main Street Drugs, LLC; Priority Care Professional Staffing LLC; Medpoint, Inc.; Medpoint, LLC; Medpoint Advantage, LLC; Medpoint Pharmacy Benefit Managers, LLC d/b/a Medpoint Pharmacy; Professional Healthcare Staffing, LLC; Vincent Priority Care Pharmacy, LLC d/b/a The Medicine Chest; and Burns Discount Drug Store LLC.

WHEREAS, on May 8, 2020, the Court entered default judgment against the Mingas, PHC, Medpoint, LLC, and Medpoint Advantage, LLC (the “Defaulted Defendants”) with respect to all claims asserted in the Complaint;

WHEREAS, on May 26, 2020, Roche submitted evidence of its damages and sought an award of damages against the Mingas, PHC, Medpoint, LLC, and Medpoint Advantage, LLC in the amount of \$166,435,403.58 (the “Full Claim Amount”);

WHEREAS, the United States has informed the Parties that it may seek civil and/or criminal forfeiture from one or more Defendants and may seek to recover some or all of the amount of such forfeiture from the Fund;

WHEREAS, the State of Mississippi has informed the Parties that it may pursue monetary claims from one or more of the Defendants and may seek to recover from the Fund;

WHEREAS, Roche has entered an agreement with the United States and the State of Mississippi with respect to any competing claims to the Fund;

NOW THEREFORE, in consideration of the promises, releases, representations, and warranties set forth in the Settlement Agreement dated February 22, 2021 between Roche and the Defendants (the “Settlement Agreement”), the sufficiency of which is acknowledged by all parties to this Consent Judgment, Roche and Defendants agree to be bound as follows:

1. Defendants, along with their principals, agents, members, servants, employees, directors, officers, parents, successors, heirs, assigns, executors, representatives, and subsidiaries, and all other persons in active concert and participation with them, are permanently enjoined from adjudicating, purchasing, selling, distributing, or dispensing Roche’s Accu-Chek test strips, except that Defendants shall be permitted to engage in the foregoing activities as employees of publicly traded companies.

2. Defendants may not invest in, control, own, or participate in any business that violates any term of this Consent Judgment, except that Defendants shall be permitted to engage in the foregoing activities as employees of or passive investors in publicly traded companies.

3. If Defendants are found by the Court to have violated the prohibitions of this Consent Judgment or to have failed to maintain complete records of their violations, Roche is entitled at its election to liquidated damages of \$1,000 per 50-count box of Accu-Chek® blood glucose test strips (or equivalent per-strip value for 25-count, 100-count, or any other boxes) that Defendants sell or which are sold on their behalf by their agents, servants, employees, subsidiaries, and all other persons in active concert and participation with them who aid and abet Defendants in violating this Consent Judgment; or to Roche’s actual, statutory, and punitive damages. In any action, regardless of which measure of damages Roche selects, Roche shall be entitled to recover all costs and expenses incurred or reasonably expected to be incurred in connection with enforcement of its rights, including attorneys’ fees and investigator fees for finding and demonstrating that Defendants (or those acting in concert and participation with Defendants) have violated this Consent Judgment and otherwise incurred in connection with obtaining, enforcing, and collecting an award of damages. All liability will be joint and several

among Defendants.

4. In addition to other remedies, including damages, for contempt of this Consent Judgment, in the event of a breach or violation by a Defendant or any other person in active concert and participation with a Defendant who aid and abet him or her in violating this Consent Judgment, Roche is entitled to a preliminary and permanent injunction against the breaching conduct upon a showing of a possibility of success of establishing that such a breach occurred.

5. Roche and Defendants agree that jurisdiction and venue for an action for contempt of this Consent Judgment exists in the United States District Court for the Northern District of Alabama. In such an action, Defendants shall waive any and all defenses based upon personal jurisdiction, subject matter jurisdiction, and venue.

6. The Clerk of Court of the Northern District of Alabama is hereby ORDERED to draw a check payable to the order of Patterson Belknap Webb & Tyler LLP in the amount of full contents of the Fund (\$43,331,950.55 plus accrued interest), which check shall be made available to be picked up by David Canupp, Esq., counsel for Roche, within one business day of the entry of this Consent Judgment, and deposited in an escrow account (the "Escrow Account") held or controlled by Roche's counsel.

(a) Thirty-five million two hundred thirty-one thousand, nine hundred fifty dollars and fifty-five cents (\$35,231,950.55) (the "Roche Portion"), plus any additional amount not held pursuant to paragraphs 6(b) or 6(c) ("Accrued Interest"), may be released from the Escrow Account to Roche immediately.

(b) Seven million one hundred thousand dollars (\$7,100,000) (the "United States Portion") will be held in the Escrow Account pending resolution of a potential forfeiture claim by the United States. If the United States brings a criminal or civil forfeiture claim against any Defendant, or property traceable to their unlawful conduct, on or before February 1, 2023 and obtains a forfeiture judgment, the United States would receive either to (i) \$7,100,000 if the forfeiture judgment is equal to or greater than \$7,100,000; or (ii) the full amount of any forfeiture judgment less than \$7,100,000.

(c) One million dollars (\$1,000,000) (the "Mississippi Portion") will be held in the Escrow Account pending resolution of a potential claim by the State of Mississippi. If the State of Mississippi files brings a claim for a criminal fine or civil forfeiture against any Defendant on or before February 1, 2023 and obtains a judgment, the State of Mississippi would be entitled either to (i) \$1,000,000 if the judgment is equal to or greater than \$1,000,000, or (ii) to the full amount of any judgment less than \$1,000,000.

(d) Any amount of the United States Portion that is not transferred to the United States pursuant to paragraph 6(b), and any amount of the Mississippi Portion that is not transferred to the State of Mississippi pursuant to paragraph 6(c), shall be transferred to Roche, in accordance with the agreement between Roche, the United States, and the State of Mississippi.

7. Roche shall be entitled to a judgment for the Full Claim Amount

(\$166,435,403.58) against each of the Asset-Holder Defendants, the Corporate Defendants, and any individual Defendant who causes, participates in, or would benefit from the events described below, jointly and severally, if any of the following occurs:

(a) Any Defendant makes any claim to any portion of the Fund, the Roche Portion, the United States Portion, the Mississippi Portion, or any proceeds of any of the foregoing.

(b) Any Defendant directs, supports, encourages, facilitates, or otherwise consents to the filing of a claim by any non-party, other than the United States Government through a claim of forfeiture or the State of Mississippi, to any portion of the Court Funds, the Roche Portion, the United States Portion, the Mississippi Portion, or any proceeds of any of the foregoing. This includes, but is not limited to, any agreement between any Defendant and any attorney(s) for any non-party, or payment by any Defendant to any attorney(s) for any non-party, related to a claim to the Fund, the Roche Portion, the United States Portion, the Mississippi Portion, or any proceeds of any of the foregoing.

(c) The Minga 2013 Irrevocable Trust (the "Trust"); any beneficiary of the Trust; any other trust to which Phillip Minga, Konie Minga, Wesley Minga, Kristen Knotts, Daniel Baker, and/or Heather Baker, or any of their employees, children, descendants (born or unborn), or other family members is a beneficiary, grantor, and/or trustee; or any beneficiary of any such trust, makes a claim to the Fund, the Roche Portion, the United States Portion, the Mississippi Portion, or any proceeds of any of the foregoing.

(d) Any one or more of the Asset-Holding Defendants, the Corporate Defendants, Phillip Minga, and/or Konie Minga, within two years after the Effective Date, files or consents to the filing of a petition or proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or becomes the subject of such a petition or proceeding on an involuntary basis, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian (or other similar official) of any one or more Defendants, or for any substantial part of their property, or makes a general assignment for the benefit of creditors, or fails to make commercially reasonable efforts to pay substantially all their debts as they become due, excluding debts to attorneys or to the United States or the State of Mississippi, or takes any corporate action in furtherance of any of the foregoing.

8. This Consent Judgment is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure, and this Action is hereby terminated, with prejudice, only as to Defendants, without costs or attorneys' fees, subject to the conditions and limitations set forth in the Settlement Agreement between the parties, save that this Court shall retain jurisdiction over this Action, including, without limitation, over implementation of or disputes arising out of this Consent Judgment with regard to Defendants or their principals, agents, members, servants, employees, directors, officers, parents, successors, heirs, assigns, executors, representatives, and subsidiaries

9. Signatures to this Consent Judgment transmitted electronically or by facsimile shall be deemed original.



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