

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), (collectively, the “United States”), Dr. Sonjay Fonn (“Dr. Fonn”), Deborah Seeger (“Ms. Seeger”), Midwest Neurosurgeons, LLC (“MWN”), and DS Medical, LLC (“DSM”) (collectively, the “Defendants”), and Paul Cairns, Dr. Terry Cleaver, Dr. Kyle Colle, the estate of Dr. Scott Gibbs, Dr. Paul Tolentino, Dr. Kevin Vaught, and Daniel Henson (collectively, the “Relators”) (hereafter all of the foregoing are collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Dr. Sonjay Fonn is a neurosurgeon practicing primarily in Cape Girardeau, Missouri who has treated Medicare and Medicaid patients. MWN is a single-member limited liability company owned and controlled by Dr. Fonn. MWN has submitted claims to Medicare and Medicaid for professional services including services performed by Dr. Fonn. Ms. Seeger owned and controlled DSM, a medical device distributorship, during times relevant to the allegations of the United States and Relators. DSM distributed spinal implant devices for use in Dr. Fonn’s surgeries.

B. On January 5, 2012, Relators filed a qui tam action in the United States District Court for the Eastern District of Missouri captioned *United States ex rel. Cairns, et al. v. DS Medical, LLC, et al.*, 1:12-cv-0004, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The United States intervened in the Civil Action on June 30, 2014 and filed the United States’ Complaint in Intervention on July 9, 2014.

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

D. The United States contends that it has certain civil claims against Defendants arising from Defendants’ conduct of submitting, and causing to be submitted, false claims to Medicare and Medicaid as described in the United States’ Complaint in Intervention for the period from January 1, 2009 through March 31, 2012. That conduct is referred to below as the “Covered Conduct.”

E. Defendants deny the contentions of the United States and Relators. This Agreement is neither an admission of liability by Defendants nor a concession by the United States or Relators that their claims are not well founded.

F. Effective December 1, 2017, the Centers for Medicare & Medicaid Services (“CMS”) suspended Dr. Fonn’s and MWN’s Medicare payments pursuant to 42 C.F.R. § 405.371(a)(2) based upon a determination by the United States that credible allegations of fraud existed. Dr. Fonn and MWN deny these grounds, and this Agreement is not a concession by Dr. Fonn or MWN that the suspension was well-founded. The total amount held by the United States as of March 7, 2023 as a result of this payment suspension, a sum of \$410,987.78, shall be defined as the “Suspended Amount.”

G. In November 2017, a Medicare Unified Program Integrity Contractor (UPIC), opened a review of claims submitted by MWN to Medicare. That review concerned allegations and claims for payment that are outside of the scope of the Covered Conduct. In September 2022, the UPIC informed MWN that it determined MWN had been overpaid by \$899,816 (the “CMS Overpayment”). On October 26, 2022, Wisconsin Physicians Services issued a demand

letter to Dr. Fonn and MWN for the full amount of the CMS Overpayment. Dr. Fonn and MWN deny that such an overpayment exists and have filed an appeal and otherwise continued to pursue their administrative remedies. Dr. Fonn and MWN reserve all of their rights to pursue any administrative, judicial review and/or appellate rights that they possess. This Agreement does not apply to or resolve the CMS Overpayment in any way.

H. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relators' 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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Defendants agree to pay to the United States a total of \$825,000 (the "Settlement Amount") (of which \$412,500 constitutes restitution), plus interest on the Settlement Amount, as follows:

a. Defendants will make a payment to the United States in the amount of \$39,012.22 (\$450,000 less the Suspended Amount), plus interest on this amount accruing at a rate of 3.625% per annum from March 9, 2023 until the date of payment (as illustrated by the Payment Schedule, attached hereto as Exhibit A; to the extent that Defendants make any payments earlier than the dates set forth in Exhibit A, the terms of this Agreement, and not the amounts listed in Exhibit A control), no later than seven calendar days after the Effective Date of this Agreement.

b. As of the Effective Date of this Agreement, Defendants hereby agree that the United States shall retain the Suspended Amount forevermore. Defendants expressly relinquish any and all rights of any kind that they may have with respect to the Suspended

Amount, including, but not limited to: any and all claims or rights to have an overpayment determined under 42 C.F.R. § 405.372(c), any and all rights to payment of the Suspended Amount funds, and any and all rights to appeal, whether formally or informally and whether administratively or judicially, the right of the United States and/or CMS to retain those funds, and any other rights Defendants may have to challenge the Withholding or the Suspension in any respect. Defendants acknowledge that, once they have fully exhausted any of their rights to pursue any administrative or judicial review and/or appeal of the CMS Overpayment, the Suspended Amount will first be used to satisfy any obligation asserted by CMS as a result of the claimed CMS Overpayment. After application of the Suspended Funds to the claimed CMS Overpayment, if any funds remain from the Suspended Amount, those funds will be used to pay this Agreement. None of the Suspended Amount funds will be returned to Defendants. The use of any or all of the Suspended Amount to satisfy any obligation claimed by CMS as a result of the CMS Overpayment will not cause Defendants to have any additional financial obligation to the United States under the terms of this Agreement.

c. Over a period of three years, Defendants shall be jointly and severally liable to pay the remaining balance of the Settlement Amount (\$375,000), plus interest on the remaining balance of the Settlement Amount at a rate of 3.625% per annum from March 9, 2023, in three equal installment payments (the “Payments Over Time”) (as illustrated by the Payment Schedule, attached hereto as Exhibit A; to the extent that Defendants make any payments earlier than the dates set forth in Exhibit A, the terms of this Agreement, and not the amounts listed in Exhibit A control). The first such payment, of \$125,000 plus interest, will be due one year after the Effective Date of this Agreement; the second such payment, of \$125,000 plus interest, will be due two years after the

Effective Date of this Agreement; and the final such payment, of \$125,000 plus interest, will be due three years after the Effective Date of this Agreement.

d. Interest shall accrue on the unpaid Settlement Amount at a rate of 3.625% per annum. Collectively the Settlement Amount and interest received by the United States shall be referred to as the Settlement Payments.

e. Defendants shall fully collateralize the Payments Over Time and permit the United States to record with the applicable recorder of deeds office a security interest or other encumbrance (e.g., deed of trust) on the parcel of land identified as 36 Doctor's Park (the "Collateral") immediately upon the Effective Date of this Agreement. By agreement of the Parties, substitute or additional property may become subject to the terms of this Agreement and serve as the Collateral. The United States shall bear the cost of recording any security interest on the initial Collateral. If Defendants request a change in the Collateral during the term of the Agreement, Defendants shall bear the costs of recording any such change in the Collateral. The Parties shall cooperate fully and expeditiously to execute such documents and perform such acts as may be necessary to perfect the United States' security interest in the Collateral. If Defendants fail to execute and return to the United States any documents required to perfect the security interest or other encumbrance within five business days of being presented with such documents (or by such other deadline as the Parties may agree to in writing), the United States, at its sole discretion, may either rescind this Agreement or declare that Defendants are in Default (as described in paragraph 16 below).

f. The value of the Collateral will be its fair market value as set forth in a real estate appraisal conducted by a qualified appraiser at or around the time the property is identified as Collateral. If the United States has a reason to believe that the Collateral

has declined in value, it may seek to have the property re-appraised. If the re-appraised fair market value of the Collateral is less than the full amount of the balance of the Payments Over Time, Defendants will identify additional or substitute collateral within 14 business days of the afore-mentioned appraisal, such that the total value of all of the Collateral is at or above the full amount of the remaining balance of the Payments Over Time. Defendants shall permit the United States to record with the applicable recorder of deeds office a security interest or other encumbrance (e.g., deed of trust) on the additional or substitute collateral as agreed by the Parties. Defendants' failure to identify additional or substitute collateral shall constitute a Default (as described in paragraph 16 below).

g. Defendant Deborah Seeger warrants that her company, DS Enterprises, LLC (Missouri Charter No. LC0148312), is the sole owner and holds marketable title to each parcel of the Collateral, and that there are no other recorded liens or other encumbrances against any parcel of the Collateral as of the Effective Date of this Agreement. In the event that DS Enterprises, LLC, is not the sole owner and title holder to any parcel of the Collateral as of the Effective Date of this Agreement, or there are recorded liens or other encumbrances on any parcel of the Collateral as of the Effective Date of this Agreement, Defendants shall have 10 business days to identify substitute Collateral. If Defendants fail to identify substitute Collateral, they shall be in Default (as described in paragraph 16 below). Defendants agree that while the encumbrances are in place, they shall not cause or allow any other liens or other encumbrances to be placed on the Collateral. Defendants shall timely pay all local, state, and federal real property taxes owed on the Collateral until the full balance of the Payments Over Time are paid in full. Upon request and valid notice of same, Defendants shall provide the United States with proof that any real property taxes owed on the Collateral have been paid within 14

business days of the request of the United States. Defendants' failure to pay any real property taxes on the Collateral shall constitute a Default (as described in paragraph 16 below). Defendants shall maintain property insurance on the Collateral until the Payments Over Time are paid in full. The insurance policy must insure against a loss of an amount no less than the full amount of the balance of the Payments Over Time. At the United States' request and upon valid notice, within 14 business days of such notice, Defendants shall produce to the United States a certificate of insurance. Defendants shall provide and maintain the Collateral in good condition and shall make any and all necessary repairs to the Collateral to ensure the fair market value of the Collateral is no less than the balance of the Payments Over Time. Defendants shall timely pay all utilities such as are due on the Collateral (e.g., sewer).

h. If Defendants reduce the full outstanding balance of the Settlement Amount, Defendants will have the right to request in writing, and the United States shall agree, to provide Defendants with a recordable release of the security interest or other encumbrance on any specific parcel of real property, as long as the remaining Collateral, valued at the time of Defendants' written request, exceeds the full outstanding balance of the Settlement Amount. The United States will provide such release within 14 business days of valid notice of such request by Defendants. Defendants will bear the cost of recording any release of the security interest or other encumbrances.

i. The encumbrances are enforceable by the United States upon an event of Default (as defined in Paragraph 16 below), and will be released upon Defendants' satisfaction of all financial and other obligations under this Agreement.

j. If the Collateral is sold, merged, or transferred, or a significant portion of the Collateral is sold, merged, or transferred into another non-affiliated entity, Defendants

shall promptly notify the United States, and all remaining payments owed pursuant to the Agreement shall be accelerated and become immediately due and payable.

k. All of the Settlement Payments shall be made by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

1. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

2. Conditioned upon the United States receiving the Settlement Amount payments, and further conditioned upon the United States and Relators resolving Relators' claim to a share of the Settlement Amount through a separate agreement, the United States will pay the Relators within a reasonable amount of time by electronic funds transfer.

3. Relators claim entitlement to attorney's fees, costs, and expenses allowable under 31 U.S.C. § 3730(d). Defendants reserve the right to challenge Relators' entitlement to such attorney's fees, costs and expenses on all available grounds. Defendants and Relators, through their legal counsel, shall separately resolve, either through negotiated resolution or through proceedings before the Court, Relators' entitlement to any attorney's fees, costs, and expenses allowable under 31 U.S.C. § 3730(d).

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and subject to Paragraph 16 (concerning default), and Paragraph 17 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, the United States releases Defendants, together with any of their respective current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current and/or former corporate owners; all entities owned and controlled by Defendants, including but not limited to Fonn Enterprises, LLC, DS Enterprises, LLC and Midwest Family

Care, LLC; and the corporate successors and assigns of any of them 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, and/or fraud.

5. Subject to Paragraph 3 above and the exceptions in Paragraph 6 below, and subject to Paragraph 16 (concerning default), and Paragraph 17 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Defendants, together with any of their respective current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current and/or former corporate owners; all entities owned and controlled by Defendants, including but not limited to Fonn Enterprises, DS Enterprises and Midwest Family Care; and the corporate successors and assigns of any of them from any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and any conduct alleged in the Civil Action.

6. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims and rights 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 or enforcement right, 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 of individuals, other than those individuals and that conduct expressly released in Paragraph 4;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the Relators' Share, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730. The United States and Relators and their 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 Relators should receive of any proceeds of the settlement of their claim(s).

8. Subject to the exception identified in Paragraph 3, Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release Defendants, and their officers, agents, and employees, from any liability to Relators arising from the filing of the Civil Action.

9. Defendants waive and shall not assert any defenses they 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.

10. Defendants fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have 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 or the United States' investigation or prosecution thereof.

11. Defendants fully and finally release the Relators from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted or could have asserted, on or before the date of execution of this Agreement, against the Relators, related to the allegations in Relators' *qui tam* complaint and the Relators' investigation and prosecution thereof.

12. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

13. Defendants agree 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Defendants' 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 attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payments Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relators, including costs and attorneys' 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 Defendants, and Defendants 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 Defendants or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Defendants 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 Defendants 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. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants 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 Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Defendants 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 Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

14. 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 15 (waiver for beneficiaries paragraph), below.

15. Defendants agree that they 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.

16. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct.

a. In the event that Defendants fail to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, or otherwise commit, or fail to commit, one of the other acts described as constituting a Default in Paragraph 1 above, time being of the essence, Defendants shall be in Default of Defendants' payment obligations ("Default"). The United States will provide a written Notice of Default, and Defendants shall have an opportunity to cure such Default within ten (10) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Agreement up to the date of payment or otherwise taking the action necessary to comply with the obligations set forth in Paragraph 1 above. Notice of Default will be delivered to the undersigned counsel for the Defendants and shall be sent by hard copy, certified mail return receipt requested as well as by email, read receipt requested. If Defendants fail to cure the Default within ten (10) calendar days of receiving the Notice of Default, and in the absence of an agreement with the United States to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per

annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, Defendants agree that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the releases provided in Paragraph 4 above, with any recovery reduced by the amount of any payments previously made by Defendants to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Defendants and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Defendants agree immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, Defendants waive and agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against Defendants within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on January 5, 2012. Defendants agree not to contest any offset, recoupment, and/or collection action

undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

c. In the event of Uncured Default, OIG-HHS may exclude Defendants from participating in all Federal health care programs until Defendants pay the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Defendants. Defendants waive any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agree not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Defendants wish to apply for reinstatement, they must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Defendants will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

17. In exchange for valuable consideration provided in this Agreement, Defendants and Relators acknowledge the following:

a. Defendants have reviewed their financial situation and warrant that they 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.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendants, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Defendants were or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If any of Defendants' payments or 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) or if, before the Settlement Amount is paid in full, Defendants or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Defendants' debts, or to adjudicate Defendants as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Defendants or for all or any substantial part of Defendants' assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the releases provided in Paragraph 4 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Defendants in the amount of \$14,615,000, less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Defendants, a receiver, trustee, custodian, or other similar official for Defendants;

(iii) if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States shall not be responsible for the return of any amounts already paid by the United States to the Relators; and

(iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relators pursuant to Paragraph 2 are recovered from the United States in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment made under Paragraph 1 of this Agreement, Relators shall, within thirty days of written notice from the United States to the undersigned Relators' counsel, return to the United States all amounts recovered from the United States.

f. Defendants agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 17.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Defendants shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Defendants waive and 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 claim, action, or proceeding brought by the United States within 120 days of written notification to Defendants that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on January 5, 2012.

18. Subject to the Court's continuing jurisdiction specified in Paragraphs 2 and 3, upon receipt of the first payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1), dismissing with prejudice all claims asserted in the United States' Complaint in Intervention as to both the United States and Relators and dismissing with prejudice as to

Relators and without prejudice as to the United States all other claims asserted on behalf of the United States in the Civil Action.

19. Except as provided in Paragraph 3, above, 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 into this Agreement without any degree of duress or compulsion.

21. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Missouri. 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. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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 Defendants' successors, transferees, heirs, and assigns.

26. This Agreement is binding on Relators' 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 and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 3/15/2023

BY: 

Diana K. Cieslak
David M. Finkelstein
James Nealon
Trial Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 3/14/2023

BY: 

Joshua Jones
Assistant United States Attorney
Eastern District of Missouri

DATED: _____

BY: _____

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

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
Diana K. Cieslak
David M. Finkelstein
James Nealon
Trial Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____
Joshua Jones
Assistant United States Attorney
Eastern District of Missouri

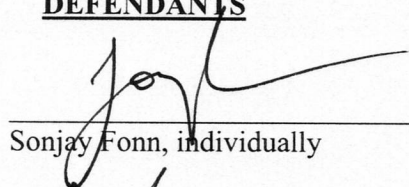
DATED: 03/15/23

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

DEFENDANTS

DATED: 3/14/2023

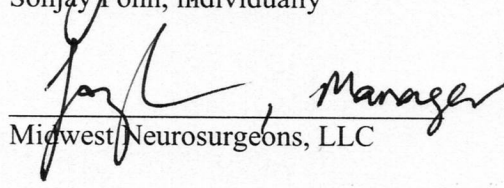
BY:



Sonjay Fonn, individually

DATED: 3/14/2023

BY:



Midwest Neurosurgeons, LLC

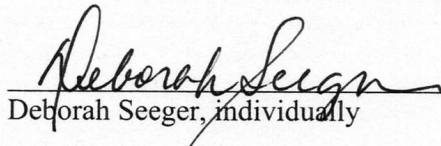
DATED: _____

BY:

James Martin
Counsel for Sonjay Fonn & Midwest Neurosurgeons, LLC

DATED: 3/14/2023

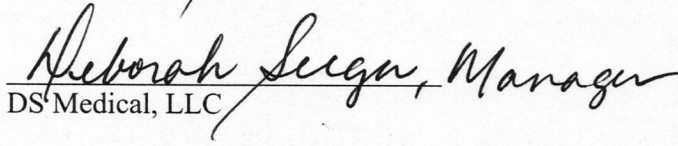
BY:



Deborah Seeger, individually

DATED: 3/14/2023

BY:



DS Medical, LLC

DATED: _____

BY:

Sanford Boxerman
Counsel for Deborah Seeger & DS Medical, LLC

DEFENDANTS

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Sonjay Fonn, individually

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Midwest Neurosurgeons, LLC

DATED: 3.14.23

BY: 
James Martin
Counsel for Sonjay Fonn & Midwest Neurosurgeons, LLC

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DATED: 3/14/23

BY: Sanford Boxerman
Sanford Boxerman
Counsel for Deborah Seeger & DS Medical, LLC

RELATORS

DATED: 03/14/2023 BY: Paul M. Cairns
Paul Cairns

DATED: 03/14/2023 BY: Terry L. Cleaver
Terry Cleaver, M.D.

DATED: _____ BY: _____
Kyle Colle, M.D.

DATED: _____ BY: _____
The Estate of Scott Gibbs, M.D.

DATED: 3/14/23 BY: Paul Tolentino
Paul Tolentino, M.D.

DATED: 3/14/23 BY: Kevin Vaught
Kevin Vaught, M.D.

DATED: _____ BY: _____
Daniel Henson

DATED: 3/14/23 BY: Matt Diehr
Matt Diehr
Counsel for Paul Cairns Terry Cleaver, Kyle Colle, the
Estate of Scott Gibbs, Paul Tolentino, Kevin Vaught, and
Daniel Henson

DATED: _____ BY: _____
Bruce Bartlett
Counsel for Paul Cairns Terry Cleaver, Kyle Colle, the
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Daniel Henson

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BY: Matt Diehr
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Estate of Scott Gibbs, Paul Tolentino, Kevin Vaught, and
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DATED: 3/14/23 BY:

Bruce Bartlett
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BY: Prashana Quiboss
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EXHIBIT A

Settlement Payment Schedule

Date	Payment	3.625% Interest	Principal	Balance
				\$414,012.22
Initial Payment*	\$39,470.80	\$458.58	\$39,012.22	\$375,000.00
3/20/2024	\$138,593.75	\$13,593.75	\$125,000.00	\$250,000.00
3/20/2025	\$134,062.50	\$9,062.50	\$125,000.00	\$125,000.00
3/20/2026	\$129,531.25	\$4,531.25	\$125,000.00	\$0.00
	\$441,658.30	\$27,646.08	\$414,012.22	

**Handshake interest begins to accrue from 3/09/2023 until initial payment;
this schedule uses an initial payment date of 03/20/2023 (11 days)*