

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") and Foot Healers Holdings – St. Louis, LLC and its subsidiaries Foot Healers of Bayless, LLC; Foot Healers of Brentwood, LLC; Foot Healers of Clarkson, LLC; Foot Healers of Salt Lick, LLC; and Foot Healers of Watson, LLC (collectively "Foot Healers") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Foot Healers is a limited liability company that offers podiatric services in the Eastern District of Missouri.

B. The United States contends that it has certain civil claims against Foot Healers arising from the following. From March 1, 2010 through July 31, 2016, Foot Healers submitted false claims for payment to Medicare by: (i) adding Current Procedural Terminology (CPT) modifiers 25 and 59 to certain claims for payment which falsely indicated that the podiatry procedures at issue were a separate service rather than services that were already included as part of another procedure or service such that Medicare should not have paid for the claims; and (ii) submitting claims for payment to Medicare which falsely indicated that a medically necessary toenail debridement was performed when the service that was actually provided was a routine nail trimming not covered by Medicare. This conduct is referred to below as the Covered Conduct.

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

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. Foot Healers agrees to pay to the United States one-hundred twenty five thousand dollars \$125,000 (Settlement Amount) plus interest at the rate of three percent per annum (3%) from the Effective Date of this Settlement Agreement through the date of full payment ("Settlement Amount").

- a. No later than two (2) business days after the Effective Date of this Agreement Foot Healers will make a payment to the United States in the amount of \$25,000.
- b. Over a period of five (5) years, Foot Healers will pay the remaining balance of the Settlement Amount, plus interest, pursuant to a promissory note (Note) in the form of Exhibit A, that Foot Healers agrees to execute contemporaneously with this Settlement Agreement.
- c. All payments shall be made by electronic funds transfer pursuant to written instructions to be provided by the United States Attorneys' Office for the Eastern District of Missouri.
- d. All payments of the Settlement Amount are restitution.
- e. In the event that Foot Healers fails to pay any amount as provided in this Paragraph 1 within five (5) business days of the date on which such

payment is due, Foot Healers shall be in default of its payment obligations ("Default"). The United States will provide written notice of the Default to Foot Healers and Foot Healers shall have the opportunity to cure such Default within thirty (30) business days from the date of receipt of the notice. Notice of Default will be delivered to counsel for Foot Healers as set forth below or to such other representative as Foot Healers shall designate in advance in writing. If Foot Healers fails to cure such Default within thirty (30) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). Foot Healers shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to Foot Healers by any department, agency, or agent of the United States at the time of Default; (b) collect the entire unpaid balance of the Settlement Amount, plus interest, including 12% interest from the date of Default, and all other amounts due upon the event of Default as specified in this paragraph; (c) file a civil action for the Covered Conduct; or (d) exercise any other rights granted by law or in equity, including referral of this matter for private collection. In the event a complaint is filed pursuant to subsection (c) of this paragraph, Foot Healers agrees not to plead, argue, or otherwise raise any defenses under

the theories of statute of limitations, laches, estoppel, or similar theories to the allegations in the complaint, except to the extent such defenses were available to Foot Healers on the Effective Date. Foot Healers agrees not to contest any consent judgment, offset, or any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court. Foot Healers shall pay the United States all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses.

- f. Notwithstanding the foregoing, in the event of Default as defined in Paragraph 1.e, above, OIG-HHS may exclude Foot Healers from participating in all Federal health care programs until Foot Healers pays the Settlement Amount and reasonable costs as set forth in Paragraph 1.d, above. OIG-HHS will provide written notice of any such exclusion to Foot Healers. Foot Healers waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees 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 Foot Healers wishes to apply for reinstatement, Foot Healers must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Foot Healers will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon Foot Healer's full payment of the Settlement Amount, the United States releases Foot Healers 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 fraud.

3. In consideration of the obligations of Foot Healers in this Agreement and the Integrity Agreement (IA), entered into between OIG-HHS and Foot Healers and conditioned upon Foot Healer's full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Foot Healers under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 4 (concerning excluded claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Foot Healers from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 4, below.

4. Notwithstanding the release given in paragraph 2 and 3 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 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;
- 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; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Foot Healers waives and shall not assert any defenses Foot Healers 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.

6. Foot Healers 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 Foot Healers 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.

7. 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 Foot Healers, and 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 investigation(s) of the matters covered by this Agreement;
- (3) Foot Healer's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;

- (5) the payment Foot Healers makes to the United States pursuant to this Agreement,
- (6) the negotiation of, and obligations undertaken pursuant to the IA to: (i) retain an independent review organization to perform annual reviews as described in Section III of the IA; and (ii) prepare and submit reports to the OIG-HHS

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). However, nothing in paragraph 7.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Foot Healers (hereinafter referred to as Unallowable Costs).

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

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

8. 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 9 (waiver for beneficiaries paragraph) below.

9. Foot Healers 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.

10. Foot Healers warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Foot Healers, 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 to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Foot Healers was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

11. Foot Healers has provided sworn financial disclosure statements (Financial Statements) to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement.

Foot Healers warrants that the Financial Statements are complete, accurate, and current as of the date they were provided. If the United States learns of asset(s) in which Foot Healers had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by Foot Healers on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$25,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Foot Healers previously undisclosed. Foot Healers agrees not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

12. In the event that the United States, pursuant to Paragraph 9 (concerning disclosure of assets), above, opts to rescind this Agreement, Foot Healers agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within sixty (60) calendar days of written notification to Foot Healers that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Settlement Agreement.

13. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. 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.

15. 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 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.

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

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

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

19. This Agreement is binding on Foot Healer's successors, transferees, heirs, and assigns.

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

21. 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: 5-14-18

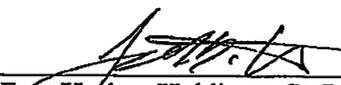
BY: Suzanne Moore
JEFFREY B. JENSEN
United States Attorney
Suzanne J. Moore
Assistant United States Attorney
Eastern District of Missouri

DATED: 5/11/2018

BY: Lisa M. Re
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: 4/3/18 BY: _____


Foot Healers Holding – St. Louis, LLC, Foot Healers of
Bayless, LLC; Foot Healers of Brentwood, LLC; Foot
Healers of Clarkson, LLC; Foot Healers of Salt Lick, LLC;
and Foot Healers of Watson, LLC by their authorized
representative

Approved as to form by:

DATED: _____ BY: _____

Sanford J. Boxerman
CAPES SOKOL
Counsel for Foot Healers Holding – St. Louis, LLC, Foot
Healers of Bayless, LLC; Foot Healers of Brentwood, LLC;
Foot Healers of Clarkson, LLC; Foot Healers of Salt Lick,
LLC; and Foot Healers of Watson, LLC

Promissory Note

1. For value received, and pursuant to a Settlement Agreement dated April ____, 2018 attached hereto (“Settlement Agreement”), Foot Healers Holdings – St. Louis, LLC and its subsidiaries Foot Healers of Bayless, LLC; Foot Healers of Brentwood, LLC; Foot Healers of Clarkson, LLC; Foot Healers of Salt Lick, LLC; and Foot Healers of Watson, LLC (collectively referred to herein as “Foot Healers” or “Maker”), for itself and its successors and assigns, promises to pay to the United States of America (“Holder”), or its assignee, the full principal sum of \$125,000, together with interest accruing at the rate of 3.0% per annum (“Outstanding Balance”) as set forth below.

Schedule of Payments (including interest)

	PAYMENT	PRINCIPAL	INTEREST	BALANCE
BEGINNING BALANCE				\$125,000
Initial Payment (within 2 business days of the effective date of the Settlement Agreement)		\$25,000		\$100,000
Year One (by June 1, 2019)	\$23,750	\$20,000	\$3,250	\$80,000
Year Two (by June 1, 2020)	\$22,400	\$20,000	\$2,400	\$60,000
Year Three (by June 1, 2021)	\$21,800	\$20,000	\$1,800	\$40,000
Year Four (by June 1, 2022)	\$21,200	\$20,000	\$1,200	\$20,000
Year Five (by June 1, 2023)	\$20,600	\$20,000	\$600	\$0

2. Payments will be made by wire transfer as indicated in the Settlement Agreement. If there is any change in the method or instructions of payment, the Holder shall inform the Maker at least 5 business days before payment is due.

3. This Note may be prepaid, in whole or in part, without penalty or premium. Partial payment does not alter the interest rate applicable each year as reflected in paragraph 1 of this Note.

4. Maker is in default of this Note on the date of occurrence of any of the following events ("Events of Default").

A. Any Event of Default that occurs as set forth in Paragraph 1.e of the Settlement Agreement.

5. Upon the occurrence of an Event of Default, without further notice or presentment and demand by the United States:

A. The United States may take any and all actions provided under law and equity, or provided by the Settlement Agreement, to collect the Outstanding Balance pursuant to this Promissory Note.

B. The United States retains any and all other rights and remedies it has or may have under law and equity, and may exercise those rights and remedies.

C. No failure or delay on the part of the United States to exercise any right or remedy shall operate as a waiver of the United States' rights. No partial or single exercise by the United States of any right or remedy shall operate as a waiver of the United States' rights.

D. Maker will pay the United States all reasonable costs of collection, including reasonable attorneys' fees and expenses.

6. Waiver by the Holder of any default by Maker, its successors, or assigns will not constitute a waiver of a subsequent default. Failure by the Holder to exercise any right, power, or privilege which it may have by reason of default will not preclude the exercise of such right, power, or privilege so long as such default remains uncured or if a subsequent default occurs.

7. This Note shall be governed and construed according to the laws of the United States of America.

8. Maker acknowledges that it is entering into this Promissory Note freely, voluntarily and with no degree of compulsion whatsoever.

IN WITNESS THEREOF, Maker intending to be legally bound hereby and so bind its successors and assigns, has caused this Note to be executed by its proper Manager, duly attested this ___ day of April, 2018.

DATED: 4/30/18 BY: [Signature]
Foot Healers Holding – St. Louis, LLC, Foot Healers of Bayless, LLC; Foot Healers of Brentwood, LLC; Foot Healers of Clarkson, LLC; Foot Healers of Salt Lick, LLC; and Foot Healers of Watson, LLC by their authorized representative

Approved as to form by:

DATED: _____ BY: _____
Sanford J. Boxerman
CAPES SOKOL
Counsel for Foot Healers Holding – St. Louis, LLC, Foot Healers of Bayless, LLC; Foot Healers of Brentwood, LLC; Foot Healers of Clarkson, LLC; Foot Healers of Salt Lick, LLC; and Foot Healers of Watson, LLC

On April 30, 2018, before me personally came John Murray, to me known who, being duly sworn, did depose and state that (1) (s)he resides in St Charles County, MO (2) is the manager of Foot Healers, the limited liability company described herein and which executed the above instrument, (3) and that (s)he executed this Promissory Note.

[Signature]
Notary Public
State of Missouri
My Commission Expires 12/22/2021



ROBIN L. STEINER
My Commission Expires
December 22, 2021
St. Louis City
Commission #13439839