

SETTLEMENT AGREEMENT

PARTIES

This Settlement Agreement ("Agreement") is entered into by and between the United States of America, acting through the Civil Division of the United States Department of Justice and the United States Attorney's Office for the Central District of California, and on behalf of the Office of Inspector General ("HHS-OIG") of the United States Department of Health and Human Services ("HHS") and the Centers for Medicare and Medicaid Services ("CMS") of HHS (collectively, the "United States"); defendants Blue Cross of California ("BCC") and WellPoint Health Networks Inc. ("WellPoint") (collectively, "Defendants"); and relator Vipul R. Vaid (the "Relator"). The United States, Defendants, and the Relator are referred to herein individually as a "Party" and collectively as the "Parties."

PREAMBLE

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

A. Defendant BCC is a California corporation organized and existing under the laws of the State of California. For many years, BCC served under contract for the United States as a fiscal intermediary for Part A of the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg. As a fiscal intermediary, BCC was responsible for, among other things, auditing cost reports submitted by

hospitals and other Medicare providers to ensure that those providers were accurately reporting their allowable costs and to determine that the reimbursements requested by the providers were accurate and appropriate. BCC ended its fiscal intermediary relationship with the United States on November 30, 2000.

B. Defendant WellPoint is a Delaware corporation authorized to do business, and doing business, in the State of California. In 1996, BCC merged into, and became an indirect (through WellPoint California Services, Inc.) wholly-owned subsidiary of, WellPoint.

C. Relator Vipul R. Vaid is an individual resident of California. Until December 1, 2000, Relator was employed as a Senior Auditor in BCC's Provider Audit Department ("PAD"), the department responsible for auditing cost reports submitted by Medicare providers. On February 11, 2000, the Relator filed a qui tam action in the United States District Court for the Central District of California captioned U.S. ex rel. Vaid v. Blue Cross of California, et al., CV 00-1521 JSL (MANx) (the "Action"), alleging that BCC and WellPoint violated the False Claims Act, 31 U.S.C. §§ 3729-3733, from 1989 through 1999.

D. The United States contends that, during the period from 1990 through November 2000, BCC falsified data entered into the System Tracking for Audit and Reimbursement ("STAR") database and the Cost Report Audit Control ("CRAC") database for monitoring

and reporting (1) desk review and audit starts and completes and (2) settlement and reopening activity (the "Covered Conduct").

E. The United States further contends that BCC engaged in the Covered Conduct in an effort to mislead the Health Care Financing Administration ("HCFA," now known as CMS, the¹ HHS agency responsible for administering the Medicare Program) as to BCC's performance of required audit work in order to obtain a favorable annual evaluation and to ensure the renewal of BCC's Medicare contract.

F. The United States contends that it has certain civil claims against Defendants for BCC's engaging in the Covered Conduct, as specified in Paragraph 2, below.

G. Defendants expressly deny any intentional wrongdoing or liability for the claims specified in Paragraph 2, below.

H. The Parties agree that the execution of this Agreement does not constitute an admission of any wrongdoing or liability by Defendants nor does it constitute 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 foregoing claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

TERMS AND CONDITIONS

In reliance on the representations contained herein, and in

consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Defendants agree to pay to the United States \$9,250,000.00 (the "Settlement Amount"). Defendants further agree to pay Relator \$30,000.00 for expenses, attorneys' fees, and costs. The foregoing payments shall be made as follows:

a. Defendants agree to pay the full Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States. Defendants agree to make this electronic funds transfer no later than the effective date of this Agreement.

b. Defendants agree to pay \$30,000.00 to Relator's attorney-client trust account by electronic funds transfer pursuant to written instructions to be provided by Relator's attorneys. Defendants agree to make this electronic funds transfer no later than the effective date of this Agreement.

2. Subject to the exceptions in Paragraph 5, below, in consideration of the obligations of Defendants in this Agreement, and upon Defendants' full payment of the Settlement Amount, the United States (on behalf of itself and its officers, agents, agencies, and departments) shall release Defendants, together with their current and former parent corporations, direct and indirect subsidiaries, successors and assigns, and current and

former officers, directors, and employees, 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; and the common law theories of payment by mistake, unjust enrichment, breach of contract, concealment, and fraud.

3. Upon the United States' and the Relator's receipt of the payments described in Paragraph 1, above, the United States will promptly file with the Court in the Action (1) a Notice of Intervention in the Action and (2) a Stipulation and [Proposed] Order of Dismissal, in the form attached hereto as Exhibit A, signed by the Parties. The Relator and Defendants shall sign the Stipulation and [Proposed] Order of Dismissal concurrently with the execution of the Agreement.

4. CMS and HHS, after due consideration of the factors identified in 48 C.F.R. §§ 9.406-1 and 9.406-2, agree that they will not pursue debarment or suspension (as set forth in 48 C.F.R. Subparts 9.4 and 309.4) of the Defendants, based on the Covered Conduct. CMS and HHS further agree not to pursue debarment or suspension of any current or former parent corporations, affiliates, direct or indirect subsidiaries, brother or sister corporations, divisions, successors, and assigns of the Defendants, based on the Covered Conduct. CMS

also agrees that any and all applications, bids, and/or proposals received by CMS from the Defendants will be considered in accordance with the Federal Acquisition Regulations (FAR), 48 C.F.R. Part 1; the HHSAR, 48 C.F.R. Chapter 3; Medicare and Medicaid statutes and regulations; and any other applicable statutes and regulations. Specifically, such consideration may take into account prior experience and past performance, including the Covered Conduct.

5. Notwithstanding any term of this Agreement, specifically reserved and excluded from the releases given in this Agreement as to any entity or person (including Defendants and Relator) 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) or regulations promulgated thereunder;

b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f));

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;

f. Any liability for express or implied warranty claims or other claims for defective or deficient services relating to the quality of those services, other than such claims based upon the Covered Conduct;

g. Any liability for failure to deliver services due, other than such liability based upon the Covered Conduct; and

h. Any civil or administrative liability of individuals (including current or former officers, directors, or employees of BCC and WellPoint) who are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct, provided, however, that if such individuals are legally entitled to repayment from BCC or WellPoint by claim for indemnification, contribution, reimbursement, or otherwise as a result of a claim brought by the United States, the releases provided in Paragraph 2, above, shall apply to such individuals with respect to that claim.

6. Upon Defendants' fulfillment of the conditions in Paragraph 1, above, Relator shall release Defendants, together with their current and former parent corporations, direct and indirect subsidiaries, successors and assigns, and current and former officers, directors, and employees, temporary employees, and Medicare Part A consultants, from any and all claims (including claims for attorneys' fees, costs, and expenses of every kind and however denominated) that he has asserted, could

have asserted, or may assert in the future against these entities and/or individuals arising out of or relating in any way to Defendants' alleged conduct set forth in the Relator's Complaint.

7. Defendants release Relator from any and all claims of every kind and however denominated, that may have existed at any time up until the effective date of this Agreement and that relate in any way to Relator's investigation of the Defendants' alleged conduct set forth in the recitals in his Complaint.

8. Defendants waive and will not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses 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. Defendants agree that this Settlement Agreement is not punitive in purpose or effect. 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.

9. Defendants fully and finally release the United States and its agencies, employees, servants, and agents from any claims

(including claims for 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 and/or its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and pursuit thereof.

10. This Agreement is intended to be for the benefit of the Parties and the entities and individuals released in Paragraph 2, above, only. The Parties do not release any claims against any other person or entity.

11. Defendants agree to the following:

a. Unallowable Costs Defined: Defendants agree that all costs (as defined in § 31.205-47 of the Federal Acquisition Regulations ("FAR") 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 Defendants and/or 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:

- (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, if any, undertaken in response to the United

States' audit(s) and civil 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 payment Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relator, including costs and attorneys' fees. (All costs described or set forth in this Paragraph 11(a) are hereinafter referred to as "unallowable costs.")

b. Future Treatment of Unallowable Costs: Defendants further agree that these unallowable costs will be separately determined and accounted for by Defendants, and Defendants will not charge such unallowable costs directly or indirectly to any contracts with the United States, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted to the Medicare Program, TRICARE Management Activity, Medicaid, the United States Department of Veteran Affairs ("VA"), or the Federal Employees Health Benefits Program ("FEHBP") by Defendants or any of their subsidiaries or affiliates.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the effective date of this Agreement, they will identify to applicable Medicare and TRICARE Management Activity fiscal agents and Medicaid, VA, and FEHBP fiscal agents, any unallowable costs

(as defined in Paragraph 11(a), above) 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 other affiliates, and will 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, will 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 other affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Defendants or any of their subsidiaries' or other affiliates' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine

or reexamine the unallowable costs described in this Paragraph.

12. Defendants warrant that they have reviewed their financial situation and that they currently are not insolvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will 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 Defendants, within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded 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 Defendants are or may become indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

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

14. This Agreement is binding on Defendants' successors, transferees, subsidiaries, and assigns.

15. The Relator agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

16. Except as expressly provided to the contrary in this Agreement, each Party will bear its or his own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. Defendants represent that they enter into this Agreement voluntarily, knowingly, and deliberately, and without any degree of duress or compulsion whatsoever.

18. Relator represents that he enters into this Agreement voluntarily, knowingly, and deliberately, and without any degree of duress or compulsion whatsoever.

19. 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 will be the United States District Court for the Central District of California.

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

21. The individuals signing this Agreement on behalf of Defendants represent and warrant that they are authorized by Defendants 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.

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

23. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 7/25/02

BY: Cathy J. Ostiller
CATHY J. OSTILLER
Assistant United States
Attorney
United States Attorney's
Office for the Central
District of California

DATED: _____

BY: _____
LAWRENCE A. CASPER
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of
Justice

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THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
CATHY J. OSTILLER
Assistant United States
Attorney
United States Attorney's
Office for the Central
District of California

DATED: 7/25/02

BY: 
LAWRENCE A. CASPER
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of
Justice

THE UNITED STATES OF AMERICA, cont'd

DATED: 7/24/02

BY: 

LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

DATED: _____

BY: _____

ELIZABETH CUSICK
Deputy Director for Medicare
Management
Center for Medicare Management
Centers for Medicare and
Medicaid Services
United States Department of
Health and Human Services

DATED: _____

BY: _____

MICHELLE SNYDER
Director, Office of Financial
Management
Centers for Medicare and
Medicaid Services
United States Department of
Health and Human Services

DATED: _____

BY: _____

MARC WEISMAN
Acting Deputy Assistant
Secretary for Grants and
Acquisition Management
United States Department of
Health and Human Services

THE UNITED STATES OF AMERICA, cont'd

DATED: _____

BY: _____
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

DATED: 7/24/2002

BY: Elizabeth Cusick
ELIZABETH CUSICK
Deputy Director for Medicare
Management
Center for Medicare Management
Centers for Medicare and
Medicaid Services
United States Department of
Health and Human Services

DATED: 7/24/2002

BY: Michelle Snyder
MICHELLE SNYDER
Director, Office of Financial
Management
Centers for Medicare and
Medicaid Services
United States Department of
Health and Human Services

DATED: _____

BY: _____
MARC WEISMAN
Acting Deputy Assistant
Secretary for Grants and
Acquisition Management
United States Department of
Health and Human Services

THE UNITED STATES OF AMERICA, cont'd

DATED: _____

BY: _____
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

DATED: _____

BY: _____
ELIZABETH COSICK
Deputy Director for Medicare
Management
Center for Medicare Management
Centers for Medicare and
Medicaid Services
United States Department of
Health and Human Services

DATED: _____

BY: _____
MICHELLE SNYDER
Director, Office of Financial
Management
Centers for Medicare and
Medicaid Services
United States Department of
Health and Human Services

DATED: 7-24-02

BY: Marc R. Weisman
MARC WEISMAN
Acting Deputy Assistant
Secretary for Grants and
Acquisition Management
United States Department of
Health and Human Services

DEFENDANTS BLUE CROSS OF CALIFORNIA AND
WELLPOINT HEALTH NETWORKS INC.

DATED: July 26, 2002

BY: Thomas C. Geiser
THOMAS C. GEISER
Executive Vice President,
General Counsel and Secretary
of WellPoint Health Networks
Inc., and Secretary of
Blue Cross of California

Approved as to form and content:

DATED: July 24, 2002

BY: Kathryn Bucher
BARBARA VAN GELDER
KATHRYN BUCHER
Wiley, Rein & Fielding
Counsel for Defendants Blue
Cross of California and
WellPoint Health Networks Inc.

RELATOR VIPUL R. VAID

DATED: _____

BY: _____
VIPUL R. VAID
Relator

Approved as to form and content:

DATED: _____

BY: _____
PHILLIP E. BENSON
DONALD R. WARREN
Counsel for Relator Vipul R.
Vaid

DEFENDANTS BLUE CROSS OF CALIFORNIA AND
WELLPOINT HEALTH NETWORKS INC.

DATED: _____

BY: _____
THOMAS C. GEISER
Executive Vice President,
General Counsel and Secretary
of WellPoint Health Networks
Inc., and Secretary of
Blue Cross of California

Approved as to form and content:

DATED: _____

BY: _____
BARBARA VAN GELDER
KATHRYN BUCHER
Wiley, Rein & Fielding
Counsel for Defendants Blue
Cross of California and
WellPoint Health Networks Inc.

RELATOR VIPUL R. VAID

DATED: 7/24/02

BY: [Signature]
VIPUL R. VAID
Relator VIPUL R. VAID

Approved as to form and content:

DATED: _____

BY: _____
PHILIP E. BENSON
DONALD R. WARREN
Counsel for Relator Vipul R.
Vaid

DEFENDANTS BLUE CROSS OF CALIFORNIA AND
WELLPOINT HEALTH NETWORKS INC.

DATED: _____

BY: _____

THOMAS C. GEISER
Executive Vice President,
General Counsel and Secretary
of WellPoint Health Networks
Inc., and Secretary of
Blue Cross of California

Approved as to form and content:

DATED: _____

BY: _____

BARBARA VAN GELDER
KATHRYN BUCHER
Wiley, Rein & Fielding
Counsel for Defendants Blue
Cross of California and
WellPoint Health Networks Inc.

RELATOR VIPUL R. VAID

DATED: _____

BY: _____

VIPUL R. VAID
Relator

Approved as to form and content:

DATED: 7/24/02

BY: Donald R. Warren

PHILLIP E. BENSON
DONALD R. WARREN
Counsel for Relator Vipul R.
Vaid