

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Attorney's Office for the Eastern District of California and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS), the United States Defense Health Agency (DHA) (collectively the "United States"), the State of California through the Office of the Attorney General, on behalf of the Department of Health Care Services (collectively, the "State"), and Dr. Neelesh Bangalore and San Joaquin Hematology/Oncology, a Professional Corporation (collectively, the "Providers" and, together with the United States and the State, the "Parties"), through their authorized representatives.

PREAMBLE

1. Dr. Neelesh Bangalore is a medical doctor licensed to practice medicine in California. He is the Chief Executive Officer of San Joaquin Hematology/Oncology, a Professional Corporation ("San Joaquin Hematology").
2. During the time period of June 2009 through May 2011, Dr. Bangalore, as the Chief Executive Officer of San Joaquin Hematology, purchased chemotherapy and other drugs from a variety of suppliers, including Warwick Healthcare Solutions, also known as Richard's Pharma, Richard's Pharma, Ltd., and Richard's Services, Ltd. (collectively "Warwick").
3. An investigation by the FDA's Office of Criminal Investigations found that during the June 2009 through May 2011 time period, Warwick sold drugs in the

United States that the FDA had not approved for use in the United States. Healthcare providers may not properly bill Medicare, Tricare, or Medicaid for unapproved drugs.

4. The FDA's investigation of Warwick identified the Providers as one of Warwick's buyers. Further investigation by the United States established that the Providers billed, and received reimbursement from, Medicare, Tricare and Medi-Cal for drugs they purchased from Warwick. Based on its investigations, the United States and the State contend that they have civil law claims under the False Claims Act ("FCA"), 31 U.S.C. § 3729(a)(1)(A), against the Providers concerning the Warwick drugs they purchased between June 2009 and May 2011 and for which they sought and received Medicare, Tricare, and Medi-Cal reimbursement (the "Covered Conduct").

5. The United States and the State further contend the Covered Conduct authorizes the recovery of damages and penalties from the Providers.

6. This Settlement Agreement is neither an admission of liability by the Providers nor a concession by the United States that their claims are not well founded.

7. 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

8. The Providers shall pay to the United States the sum of seven hundred thirty six thousand dollars (\$736,000) ("Settlement Amount") no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of California. Simple interest shall accrue at 3% annually from the Agreement's effective

date, and there is no prepayment penalty. By a separate agreement, the United States and the State have agreed on an allocation of the settlement funds whereby Medi-Cal will share in the proceeds of the settlement in consideration for the release of the Providers as provided herein.

9. The Providers fully and finally release the United States, the State and their agencies, departments, employees, servants, contractors, officers, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Providers asserted, could have asserted, or may assert in the future against the United States, the State and their agencies, departments, employees, servants, contractors, officers, and agents related to the investigation, prosecution, and settlement of this matter.

10. Subject to the provisions of Paragraphs 8 and 12 (concerning excluded claims) below, and conditioned upon the Providers' full payment of the Settlement Amount, the United States releases the Providers 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.

11. Subject to the provisions of Paragraphs 8 and 12 (concerning excluded claims) below, and conditioned upon the Providers' full payment of the Settlement Amount to the United States, the State releases the Providers from any civil or administrative monetary claim the State has for the Covered Conduct under the California

False Claims Act, Cal. Gov't Code §§ 12650-12656, or the common law theories of payment by mistake, unjust enrichment, and fraud.

12. Notwithstanding any term of this Agreement, the following claims of the United States and the State 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. Any federal or state administrative liability, including mandatory or permissive exclusion from federal or state health care programs;
- d. Any liability to the United States, the State, or their agencies for any conduct other than the Covered Conduct; and
- e. Any liability based upon obligations created by this Agreement.

13. The Providers waive and shall not assert any defenses the Providers may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

14. The Settlement Amount shall not be decreased as a result of the denial of claims for payment, if any, now being withheld from payment by any Medicare

contractor (*e.g.*, Medicare Administrative Contractor, fiscal intermediary, carrier), Tricare, or any state payer, related to the Covered Conduct; and the Providers agree not to resubmit to any Medicare contractor, Tricare, or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

15. 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 16 (waiver for beneficiaries paragraph), below.

16. The Providers 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.

17. The Providers warrant that they have reviewed their financial situation and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will be solvent following the \$736,000 payment to the United States. 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 the Providers 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 the Providers

were or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

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

19. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

20. 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 California, and to the extent that state law applies to the dispute, California law shall apply. 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.

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

22. Each person who signs this Agreement in a representative capacity warrants that he or she is fully authorized to do so.

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

24. This Agreement is binding on the Providers' successors, transferees, heirs, and assigns.

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

26. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles or electronic copies of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES

BENJAMIN B. WAGNER
United States Attorney

Dated: By: Vincente Tennerelli
VINCENTE A. TENNERELLI
Assistant United States Attorney

Dated: By: _____
ROBERT K. DECONTI
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

FOR THE STATE OF CALIFORNIA

KAMALA D. HARRIS
Attorney General of California

Dated: By: _____
SARALYN M. ANG-OLSON
Supervising Deputy Attorney General
Bureau of Medi-Cal Fraud & Elder Abuse

Dated: By: _____
On behalf of the California
Department of Health Care Services

FOR DR. NEELESH BANGALORE

Dated: By: _____
DR. NEELESH BANGALORE

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FOR THE UNITED STATES

BENJAMIN B. WAGNER
United States Attorney

Dated: By: _____
VINCENTE A. TENNERELLI
Assistant United States Attorney

Dated: 6/9/15 By: _____
Robert K. DeConti
ROBERT K. DECONTI
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

FOR THE STATE OF CALIFORNIA

KAMALA D. HARRIS
Attorney General of California

Dated: By: _____
SARALYN M. ANG-OLSON
Supervising Deputy Attorney General
Bureau of Medi-Cal Fraud & Elder Abuse

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By:

VINCENTE A. TENNERELLI
Assistant United States Attorney

Dated:

By:

ROBERT K. DECONTI
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

FOR THE STATE OF CALIFORNIA

KAMALA D. HARRIS
Attorney General of California

Dated:

By:

Saralyn M. Ang-Olson
SARALYN M. ANG-OLSON
Supervising Deputy Attorney General
Bureau of Medi-Cal Fraud & Elder Abuse

Dated:

By:

Jim Kent
On behalf of the California
Department of Health Care Services

FOR DR. NEELESH BANGALORE

Dated:

By:

DR. NEELESH BANGALORE

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ROBERT K. DECONTI
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Attorney General of California

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SARALYN M. ANG-OLSON
Supervising Deputy Attorney General
Bureau of Medi-Cal Fraud & Elder Abuse

Dated: By: _____
On behalf of the California
Department of Health Care Services

FOR DR. NEELESH BANGALORE

Dated: 5-12-15 By: _____

DR. NEELESH BANGALORE

FOR SAN JOAQUIN HEMATOLOGY/ONCOLOGY, A PROFESSIONAL CORPORATION

Dated: 6/12/15

By: 

DR. NEELESH BANGALORE
Chief Executive Officer

APPROVED AS TO FORM AND CONTENT

Dated:

By: _____
MARK E. REAGAN
Attorney for Dr. Neelesh Bangalore and San
Joaquin Hematology/Oncology,
a Professional Corporation

FOR SAN JOAQUIN HEMATOLOGY/ONCOLOGY, A PROFESSIONAL CORPORATION

Dated:

By:

DR. NEELESH BANGALORE
Chief Executive Officer

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