

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among: (a) 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”) and the Defense Health Agency (“DHA”), acting on behalf of the TRICARE Program (collectively, the “United States”); and (b) California Pain Consultants and Amitabh Goswami, D.O. (collectively, “CPC”). The United States and CPC are hereafter collectively referred to as “the Parties.”

RECITALS

- A. California Pain Consultants is the business name of a California medical corporation, Amitabh U. Goswami, D.O., Inc., with its office in Fresno, California.
- B. Dr. Goswami is a Doctor of Osteopathic Medicine and is enrolled as a supplier in the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”), the California Medi-Cal Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medi-Cal”), and the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”). Dr. Goswami is the owner and rendering provider for California Pain Consultants.
- C. The Government contends that at all times relevant to this Agreement, CPC caused to be submitted claims for payment to Medicare, Medi-Cal, and TRICARE.
- D. The False Claims Act, 31 U.S.C. § 3729 *et seq.* (“FCA”), prohibits any person from knowingly causing to be presented a false claim for payment to the Government, including Medicare, Medi-Cal, and TRICARE or contractors thereof. The FCA also prohibits any person from conspiring to commit a violation of the FCA based on such conduct.
- E. The United States contends that it has certain civil claims against CPC for knowingly causing the submission of false claims to the Government, as well as conspiracy in

relation to such violations, in connection with the following conduct described below (hereinafter referred to as the “Covered Conduct”):

- a. CPC invested in “Management Service Organizations,” Bayview Specialty Services, LLC, and Coastline Specialty Services, LLC (the “MSOs”).
- b. The MSOs were affiliated with various mail-order pharmacies to which CPC referred and directed patients for the dispensing of prescription medications between August 2017 and August 2021, including: Professional Rx Pharmacy LLC; Inland Medical Consultants, LLC; Portland Professional Pharmacy LLC; Sunrise Pharmacy LLC; Professional 205 Pharmacy, LLC; Synergy Medical Systems, LLC; Synergy RX LLC; Synergy Medical Systems LLC; Prestige Professional Pharmacy; One Way Drug LLC; Partell Pharmacy LLC; Optimum Care Pharmacy, Inc. (d/b/a Marbella Pharmacy); JMSP LLC; and MPKM, LLC.
- c. CPC received improper remuneration from the MSOs that (1) was unreasonably disproportionate to the amount invested in the MSOs, with the purpose of financially inducing or rewarding prescriptions directed to the Pharmacies, for which the pharmacies submitted claims to Medicare, Medi-Cal and TRICARE; and (2) was determined in a manner that directly took into account the volume and value of prescriptions directed to the pharmacies, for which the pharmacies submitted claims to Medicare, Medi-Cal and TRICARE.
- d. By soliciting or receiving such improper remuneration, CPC violated the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b (“AKS”).

e. On account of these financial arrangements and knowing AKS violations, CPC violated the False Claims Act.

F. This Agreement is neither an admission of liability by CPC nor a concession by the United States that its claims are not well founded. CPC denies the United States' contentions.

G. 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. CPC, jointly and severally, agree to pay the United States the sum of \$835,000 (the "Settlement Amount"), of which \$464,000 is restitution, as follows: \$800,000 will be paid no later than forty-five (45) calendar days and \$35,000 will be paid no later than seventy-five (75) calendar days after the Effective Date of this Agreement, which payment will be by electronic funds transfer pursuant to the written instructions to be provided by the Office of the United States Attorney for the Eastern District of California.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims of the United States), Paragraph 11 (concerning default), and Paragraph 12 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, the United States releases CPC 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 common law theories of payment by mistake, unjust enrichment, and fraud, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, the sanction provisions of the Physician Self-Referral Law (commonly known as the "Stark Law") at 42 U.S.C. §§ 1395nn(g)(3) and (g)(4), and any other statutory provision creating a cause of action

for civil damages or civil penalties for which the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, 0.45(d).

3. Notwithstanding the releases given in Paragraph 2 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.

4. CPC shall not assert any defenses they may have (whether individually or collectively) 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.

5. CPC fully and finally release the United States, as well as all agencies, officers, agents, employees, and servants thereof, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that CPC have asserted, could have asserted, or may assert in the future, related to the Covered Conduct or the United States' investigation or

prosecution thereof. CPC further hereby expressly waive all rights they may have by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6. 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), TRICARE, or any state payer, related to the Covered Conduct; and CPC agree not to resubmit to any Medicare contractor, TRICARE, 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.

7. CPC 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 CPC or any present or former officers, directors, employees, shareholders, or agents thereof, 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) CPC's investigation, defense, and corrective actions undertaken in response to the audit(s) and civil investigation(s) connected to the matters covered by this Agreement (including attorneys' fees);

(4) the negotiation and performance of this Agreement; and

(5) the payments made to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes and under Medicare, Medi-Cal, any other state Medicaid program, and TRICARE (hereinafter referred to as “Unallowable Costs”).

b. Future Treatment of Unallowable Costs: CPC shall not directly or indirectly charge or seek payment from the United States, Medicare, Medi-Cal, any other State Medicaid program, TRICARE, or any Federal Employees Health Benefit Plan (“FEHBP”), for any Unallowable Costs, including but not limited to charges or reimbursements through any cost report, cost statement, information statement, or payment request.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Only to the extent applicable to CPC, within 90 days of the Effective Date of this Agreement, CPC further agree to identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medi-Cal and FEHBP fiscal agents, any Unallowable Costs included in payments previously sought from the United States, Medi-Cal, 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. CPC agree to adjust any such cost reports, cost statements, information reports, or payment requests, even if already settled, to account for the effect of the inclusion of the Unallowable Costs. CPC agree that the United States, at a minimum, shall be entitled to recoup from CPC 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 or on behalf of CPC.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine CPC's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

8. CPC shall not interfere with the cooperation of other individuals, including California Pain Consultants' employees and agents, with respect to any investigation, action, or proceeding which relates to the Covered Conduct. For the purpose of clarity, this Paragraph 8 is not intended to limit, waive or alter the rights of the United States under the Federal Rules of Civil Procedure as to CPC (as defined to include Dr. Goswami), with respect to litigation or proceedings against other parties.

9. 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 10 (waiver for beneficiaries), below.

10. CPC agrees that they waive and shall not seek payment in the future for any of the health care items or services connected to the Covered Conduct from any health care beneficiaries.

11. If Dr. Goswami and California Pain Consultants fail to pay the Settlement Amount as provided in the payment schedules set forth in Paragraph 1 above, CPC shall be in Default of their payment obligations ("Default").

a. In the event of Default, the United States will provide a written Notice of Default, and CPC shall have an opportunity to cure such Default within fourteen (14) business days from the date of receipt of the Notice of Default by making the payment due under the payment schedule. Notice of Default will be delivered to CPC, and/or to such other representative as they

designate in advance in writing. If CPC fail to cure the Default within fourteen (14) business days of receiving the Notice of Default and in the absence of an agreement with the Government 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, CPC agree that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and bring any civil and/or administrative claim, action, or proceeding against CPC for the claims that would otherwise be covered by the releases provided in Paragraph 2 above, with any recovery reduced by the amount of any payments previously made by CPC to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action; (iii) offset the remaining unpaid balance from any amounts due and owing to CPC Consultants 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, including referral of this matter for private collection. In the event the Government pursues a collection action, CPC agrees immediately to pay 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 Government’s reasonable attorneys’ fees and expenses incurred in such an action. In the event that the Government opts to rescind this Agreement pursuant to this Paragraph, CPC 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 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 September 12, 2023.

12. In exchange for valuable consideration provided in this Agreement, CPC acknowledge the following:

a. CPC have reviewed their financial situation and, to the best of their knowledge, believe that 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 Dr. Goswami and California Pain Consultants, 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. If CPC's 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, Dr. Goswami, California Pain Consultants, 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 Dr. Goswami's or California Pain Consultants' debts, or seeking to adjudicate Dr. Goswami or California Pain Consultants as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for Dr. Goswami or California Pain

Consultants or for all or any substantial part of Dr. Goswami's or California Pain Consultants' assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Dr. Goswami or California Pain Consultants for the claims that would otherwise be covered by the releases provided in Paragraph 2 above; and

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against CPC in the amount of at least \$835,000 less any payments received pursuant to this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Dr. Goswami or California Pain Consultants, a receiver, trustee, custodian, or other similar official thereof.

e. CPC agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 12.d 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. CPC 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). CPC 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 CPC that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date.

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 into this Agreement without any degree of duress or compulsion.

15. 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 California. 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. 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.

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

18. This Agreement is binding on CPC's successors, transferees, heirs, and assigns.

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

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

[Signature Page Follows]

THE UNITED STATES OF AMERICA

PHILLIP A. TALBERT
United States Attorney

DATED: 06/20/24

BY:



DAVID E. THIESS
STEVEN S. TENNYSON
Assistant United States Attorneys
Eastern District of California

DATED: _____

BY:

SUSAN E. GILLIN
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

DATED: _____

SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

CALIFORNIA PAIN CONSULTANTS

DATED: _____

BY:

AMITABH GOSWAMI, D.O.
Individually and On Behalf of California Pain Consultants

APPROVED AS TO FORM:

DATED: _____

BY:

William Haesy
Sagaser, Watkins & Wieland PC
Counsel for California Pain Consultants

THE UNITED STATES OF AMERICA

PHILLIP A. TALBERT
United States Attorney

DATED: _____

BY: _____

DAVID E. THIESS
STEVEN S. TENNYSON
Assistant United States Attorneys
Eastern District of California

DATED: 06/20/24

BY: _____

SUSAN GILLIN
SUSAN E. GILLIN
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

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GILLIN
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DATED: _____

SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

CALIFORNIA PAIN CONSULTANTS

DATED: _____

BY: _____

AMITABH GOSWAMI, D.O.
Individually and On Behalf of California Pain Consultants

APPROVED AS TO FORM:

DATED: _____

BY: _____

William Haesy
Sagaser, Watkins & Wieland PC
Counsel for California Pain Consultants

THE UNITED STATES OF AMERICA

PHILLIP A. TALBERT
United States Attorney

DATED: _____

BY: _____

DAVID E. THIESS
STEVEN S. TENNYSON
Assistant United States Attorneys
Eastern District of California

DATED: _____

BY: _____

SUSAN E. GILLIN
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

DATED: 06/16/2024

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for

SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

CALIFORNIA PAIN CONSULTANTS

DATED: _____

BY: _____

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Individually and On Behalf of California Pain Consultants

APPROVED AS TO FORM:

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BY: _____

William Haesy
Sagaser, Watkins & Wieland PC
Counsel for California Pain Consultants

THE UNITED STATES OF AMERICA

PHILLIP A. TALBERT
United States Attorney

DATED: _____

BY: _____
DAVID E. THIESS
STEVEN S. TENNYSON
Assistant United States Attorneys
Eastern District of California

DATED: _____

BY: _____
SUSAN E. GILLIN
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

DATED: _____

SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense


CALIFORNIA PAIN CONSULTANTS

DATED: 6/28/24

BY:  _____
AMITABH GOSWAMI, D.O.
Individually and On Behalf of California Pain Consultants

APPROVED AS TO FORM:

DATED: June 28, 2024

BY:  _____
William Haesey
Sagaser, Watkins & Wieland PC
Counsel for California Pain Consultants