

## 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), (United States); the State of California, acting through the California Department of Justice, Office of the Attorney General, Bureau of Medi-Cal Fraud and Elder Abuse (California); Advanced Pain Diagnostic & Solutions, Inc. ("Advanced Pain Diagnostics"), and Advanced Pain Diagnostics owner Kayvan Haddadan, M.D., ("Haddadan"), (collectively referred to herein as "Advanced Pain"), and Relator Tracey Fremd ("Fremd"). The United States, California, Advanced Pain, and Fremd are collectively referred to herein as "the Parties."

### RECITALS

A. Advanced Pain Diagnostics provides medical services in outpatient clinics in Sacramento, Roseville, Rocklin, and Yuba City, California. At all times relevant to this complaint, Haddadan was the sole shareholder of Advanced Pain Diagnostics.

B. On November 1, 2016, Fremd filed a *qui tam* action in the United States District Court for the Eastern District of California captioned United States and California *ex rel.* Fremd v. Advanced Pain Diagnostic & Solns 2:16-cv-2600 KJM EFB, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action).

C. The United States and California contend that Advanced Pain submitted or caused to be submitted claims for payment to California's Medicaid program (Medi-Cal), 42 U.S.C. §§ 1396-1396w-5.

D. The United States and California further contend that they have certain civil claims against Advanced Pain arising from the following conduct: from February 6, 2015, to July

29, 2016, Advanced Pain knowingly submitted false claims to Medi-Cal by using Haddadan's provider number to bill for services that were not, in fact, rendered by Haddadan, but instead were rendered by provider Jesse Vaughn ("Vaughn") while Vaughn was excluded from the Medi-Cal program. The conduct described in this Paragraph shall be referred to herein as the "Covered Conduct."

E. This Settlement Agreement is neither an admission of liability by Advanced Pain nor a concession by the United States or California that their claims are not well founded.

F. Fremd claims entitlement under 31 U.S.C. § 3730(d) and Cal. Gov't Code § 12652(g) to a share of the proceeds of this Settlement Agreement and to Fremd's 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 Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. Advanced Pain shall pay to the United States and California the total sum of \$860,378.000, plus accrued interest at the rate of 3% per annum from December 13, 2018, and continuing until and including the day of payment (the "Settlement Amount"), as follows:

a. Advanced Pain shall pay to the United States the sum of \$344,151.20, of which \$172,075.60 is restitution, plus any applicable interest as referenced herein (the "Federal Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of California no later than the latter of ten (10) business days after the Effective Date of this Agreement or five (5) business days after receiving the above-referenced written instructions. If payment is not timely received, Advanced Pain shall also pay the

interest on the Settlement Amount at a rate of 10% in addition to the 3% noted above (13%) from the date payment was due through the date payment is received.

b. Advanced Pain shall pay to California the sum of \$516,226.80, of which \$258,113.40 is restitution, plus any applicable interest as referenced herein (the "California Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by California no later than the latter of ten (10) business days after the Effective Date of this Agreement or five (5) business days after receiving the above-referenced written instructions. If payment is not timely received, Advanced Pain shall also pay California interest on the California Settlement Amount at a rate of 10% in addition to the 3% noted above (13%) from the day payment was due through the date payment is received.

2. Conditioned upon the United States and California receiving the Settlement Amount as described in Paragraph 1 above from Advanced Pain and as soon as feasible after receipt:

a. The United States shall pay Fremd by electronic funds transfer \$61,947.22.

b. California shall pay Fremd \$92,920.82.

3. Advanced Pain shall pay Fremd's counsel, The Employment Law Group, a sum of \$65,000 by electronic funds transfer pursuant to written instructions to be provided by Fremd's counsel no later than the latter of ten (10) business days after the Effective Date of this Agreement or five (5) business days after receiving the above-referenced written instructions.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Advanced Pain's full payment of the Federal Settlement Amount and applicable accrued interest, the United States releases Advanced Pain from any civil or administrative monetary claim the United States has for the Covered Conduct under the False

Settlement Agreement between: the United States, California, Advanced Pain and Solutions, Inc., Kayvan Haddadan, M.D., and relator Tracey Fremd

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.

5. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Advanced Pain's full payment of the California Settlement Amount and applicable accrued interest, California releases Advanced Pain from any civil monetary claim California has for the Covered Conduct under California's False Claims Act, Cal. Gov't Code §§ 12651(a)(1)-(3), and 12528(d), or the common law theories of payment by mistake, unjust enrichment, and fraud.

6. Notwithstanding the releases given in paragraphs 4 and 5 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 or permissive, exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) or California (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- g. Any liability of individuals other than Haddadan;

- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- i. Any liability for failure to deliver goods or services due; and
- j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Fremd and her 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 Fremd's receipt of the payment described in Paragraph 2 above, Fremd and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States and California, and their respective agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730 or Cal. Gov't Code § 12652, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Advanced Pain waives and shall not assert any defenses Advanced Pain 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.

9. Advanced Pain 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 Advanced Pain 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. Advanced Pain hereby expressly waives all rights it may have by virtue of Section 1542 of the California Civil Code, which provides:

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

Advanced Pain's releases herein shall be effective whether or not they release claims that are currently known, unknown, foreseen or unforeseen.

10. Advanced Pain fully and finally releases California, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Advanced Pain 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. Advanced Pain hereby expressly waives all rights it may have by virtue of Section 1542 of the California Civil Code, which provides:

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

Advanced Pain's releases herein shall be effective whether or not they release claims that are currently known, unknown, foreseen or unforeseen.

11. Advanced Pain fully and finally releases Fremd from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Advanced Pain has asserted, could have asserted, or may assert in the future against Fremd, related to the Covered Conduct and Fremd's investigation and prosecution thereof.

12. Fremd, for herself, and for heirs, successors, attorneys, agents, and assigns, releases Advanced Pain and its officers, agents, and employees, from any liability to Fremd arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

13. 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 Advanced Pain agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

14. Advanced Pain agrees 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of X, 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) Advanced Pain's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payments Advanced Pain makes to the United States and to California pursuant to this Agreement and any payments that Advanced Pain may make to Fremd, including costs and attorney's 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 Advanced Pain, and Advanced Pain 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 Advanced Pain or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:  
Advanced Pain 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 Advanced Pain 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. Advanced Pain agrees that the United States or California, at a minimum, shall be entitled to recoup from Advanced Pain 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 and California reserve their respective rights to disagree with any calculations submitted by Advanced Pain or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Advanced Pain 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 or California to audit, examine, or re-examine Advanced Pain's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. Advanced Pain agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Advanced Pain shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Advanced Pain further agrees to furnish to the

United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

16. 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 17 (waiver for beneficiaries paragraph), below.

17. Advanced Pain 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.

18. Upon receipt of the payments described in Paragraphs 1 and 2, above, the United States, California, and Fremd, shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1), as follows:

- a. with respect to Fremd, the dismissal shall be with prejudice;
- b. with respect to the United States and California, the dismissal shall be with prejudice as to the Covered Conduct and without prejudice as to the remaining allegations.

19. Unless otherwise stated in this Agreement, each of the Parties shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

20. Fremd and Advanced Pain warrant that they have been represented by, and have sought and obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect of this Settlement Agreement. The Settlement Agreement was negotiated by the

Parties and their respective counsel, each of whom had the opportunity to participate in the drafting thereof. Fremd and Advanced Pain hereby declare that the terms of this Settlement Agreement have been completely read, fully understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.

21. Each of the Parties and each signatory to this Agreement warrants and represents that it freely and voluntarily enters into this Settlement Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Each of the Parties further warrants and represents that no other Party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Settlement Agreement, and that no Party has relied on any inducements, promises, or representations made by any Party to this Settlement Agreement, or its representatives, or any other person, except as expressly set forth herein.

22. 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. 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.

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

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

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


26. This Agreement is binding on Advanced Pain's successors, transferees, heirs, and assigns.
27. This Agreement is binding on Fremd's successors, transferees, heirs, and assigns.
28. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
29. 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**

MCGREGOR W. SCOTT  
United States Attorney  
Eastern District of California

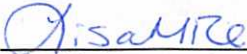
DATED: 1/4/2019

BY:

  
Catherine J. Swann  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of California

DATED: 01/15/2019

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

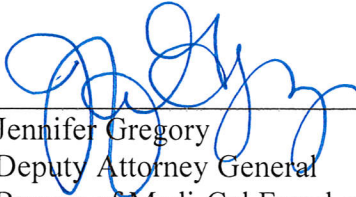
**STATE OF CALIFORNIA**

XAVIER BECERRA  
Attorney General of the State of California

DATED:

2/27/19

BY:



Jennifer Gregory  
Deputy Attorney General  
Bureau of Medi-Cal Fraud and Elder-Abuse  
Office of the Attorney General  
California Department of Justice

**RELATOR TRACEY FREMD**

DATED:

BY:

Tracey Fremd

THE EMPLOYMENT LAWGROUP, PC

DATED:

BY:

Nicholas Woodfield  
Counsel for Relator Tracey Fremd

**STATE OF CALIFORNIA**

**XAVIER BECERRA**  
Attorney General of the State of California

**DATED:**

**BY:**

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Jennifer Gregory  
Deputy Attorney General  
Bureau of Medi-Cal Fraud and Elder-Abuse  
Office of the Attorney General  
California Department of Justice

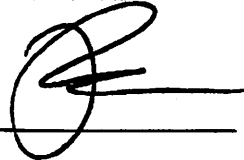
**RELATOR TRACEY FREMD**

**DATED:**

1/2/19

**BY:**

\_\_\_\_\_  
Tracey Fremd



**THE EMPLOYMENT LAWGROUP. PC**

**DATED:**

**BY:**

\_\_\_\_\_  
Nicholas Woodfield  
Counsel for Relator Tracey Fremd

**STATE OF CALIFORNIA**

**XAVIER BECERRA**  
Attorney General of the State of California

**DATED:**

**BY:**

\_\_\_\_\_  
Jennifer Gregory  
Deputy Attorney General  
Bureau of Medi-Cal Fraud and Elder-Abuse  
Office of the Attorney General  
California Department of Justice

**RELATOR TRACEY FREMD**

**DATED:**

**BY:**

\_\_\_\_\_  
Tracey Fremd

**THE EMPLOYMENT LAWGROUP, PC**

**DATED:**

**BY:**

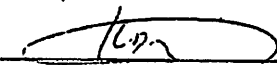
*Dec. 31, 2018*  
\_\_\_\_\_  
Nicholas Woodfield  
Counsel for Relator Tracey Fremd

**ADVANCED PAIN DIAGNOSTICS AND SOLUTIONS**

DATED:

12/31/2018

BY:


  
Kayvan Haddadan, M.D.

**KAYVAN HADDADAN, M.D.**

DATED:

12/31/2018

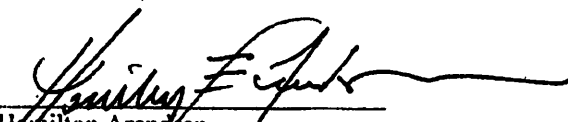
BY:

  
Kayvan Haddadan, M.D.

DATED:

1/3/19

BY:

  
Hamilton Arendsen  
Counsel for Advanced Pain Diagnostics and Solutions, Inc.,  
and Kayvan Haddadan, M.D.