

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 United States Small Business Administration (“SBA”) (collectively, the “United States”), Sandeep S. Walia, M.D., (“Dr. Walia”), and Sandeep S. Walia, M.D., a Professional Medical Corporation (“Walia PMC”), through their authorized representatives. The United States, Dr. Walia, and Walia PMC are collectively referred to as the “Parties.”

RECITALS

- A. Walia PMC is a California Professional Medical Corporation with a principal executive office in Bakersfield, California. Walia PMC is a medical practice that provides ophthalmology services to patients.
- B. Dr. Walia is the owner, Chief Executive Officer, Chief Financial Officer, and Secretary of Walia PMC.
- C. The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was enacted on March 27, 2020, to provide emergency assistance to individuals, families, and businesses affected by the coronavirus pandemic. Section 1102(a)(2) of the CARES Act amended Section 7(a) of the Small Business Act, 15 U.S.C. § 631 *et seq.*, to establish the Paycheck Protection Program (“PPP”). 15 U.S.C. § 636(a)(36). The SBA administers the PPP to provide relief expeditiously to small businesses experiencing economic hardship because of coronavirus measures.
- D. During the first round of the PPP, which ran from March 2020 through August 2020, no eligible borrower was permitted to receive more than one PPP loan. 85 Fed. Reg. 20813. The SBA determined that, during the first round of the PPP, limiting borrowers to one

loan was necessary to help ensure that as many eligible borrowers as possible could obtain a PPP loan. *Id.* This limitation helped advance Congress' goal of keeping workers paid and employed across the United States in 2020. *Id.*

E. On April 4, 2020, Walia PMC submitted an application for a PPP loan to a financial institution in Bakersfield, California (FI-1) for \$474,937, which was ultimately approved for \$283,300. On April 6, 2020, Dr. Walia submitted a second application for a PPP loan for \$430,000 through an online business loan broker, which referred Dr. Walia's application to a financial institution in Berkeley Heights, New Jersey (FI-2). Both applications were submitted under the same business name and Employer Identification Number (EIN).

F. On April 17, 2020, Dr. Walia executed a note for a \$283,300 PPP loan with FI-1, which disbursed the loan proceeds to Walia PMC on April 18, 2020.

G. On May 13, 2020, after Walia PMC received the proceeds from its first PPP loan, Dr. Walia executed a note for a second PPP loan in the amount of \$430,000 from FI-2, which disbursed the loan proceeds to Walia PMC on May 14, 2020.

H. The United States contends that, on May 13, 2020, Walia PMC and Dr. Walia knowingly caused a false claim, and knowingly made a false statement material to a false or fraudulent claim, to be made to the SBA. When Dr. Walia signed the loan note with FI-2 on May 13, 2020, Walia PMC and Dr. Walia certified that "[all] certifications, authorizations, and representations made by the Borrower ... in the [PPP] Borrower Application Form ... submitted to Lender remain true and accurate as of the date of this Note." This certification was false. In their Borrower Application Form, Walia PMC and Dr. Walia certified that, "[d]uring the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the [PPP]." As of the date of the loan note on May 13, 2020,

this statement was no longer true nor accurate because on April 18, 2020, Walia PMC had accepted a PPP loan for \$283,300 from FI-1. The United States contends that Walia PMC and Dr. Walia knew, deliberately ignored, or recklessly disregarded that Walia PMC was not entitled to a second PPP loan, let alone PPP funds totaling \$713,300. FI-2 subsequently applied to the SBA to request a loan guaranty for its PPP loan to Walia PMC. In its application, FI-2 represented to the SBA that “[Walia PMC] has not received another [PPP] loan.” As a result, the SBA guaranteed the loan and paid FI-2 a fee of \$12,900 for processing the \$430,000 PPP loan to Walia PMC. This conduct is referred to herein as the Covered Conduct.

I. Walia PMC has not sought forgiveness from FI-1 or FI-2 for either PPP loan that it received.

J. The United States contends that it has certain civil claims against Walia PMC and Dr. Walia for violating the False Claims Act, 31 U.S.C. § 3729-3733 (“FCA”). Based on these claims, the United States contends that Walia PMC and Dr. Walia are jointly and severally liable to the United States for damages and penalties totaling \$85,362 under the FCA. The United States also contends that Walia PMC was ineligible to receive a second PPP loan for \$430,000.

K. This Settlement Agreement is neither an admission of liability by Walia PMC or Dr. Walia nor a concession by the United States that its claims are not well founded.

L. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, consistent with the cooperation provided by Dr. Walia and Walia PMC in resolving this matter, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Walia PMC agrees to repay its PPP loan to FI-2, plus interest, in the amount of four hundred and thirty-four thousand, three hundred and seventy-seven dollars (\$434,377), within fourteen (14) days of the receipt of wiring instructions from FI-2 after the Effective Date of this Agreement.

2. Walia PMC and Dr. Walia agree to pay the United States the respective sums set forth below, totaling seventy thousand dollars (\$70,000) (the "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. Walia PMC and Dr. Walia shall pay the Settlement Amount in the following manner:

a. Within fourteen (14) days of the receipt of wiring instructions after the Effective Date of this Agreement, Walia PMC will make a payment to the United States in the amount of fifty-eight thousand three hundred and thirty-five dollars (\$58,335). Twelve thousand nine hundred dollars (\$12,900) of the Settlement Amount constitutes restitution from Walia PMC.

b. Within fourteen (14) days of the receipt of wiring instructions after the Effective Date of this Agreement, Dr. Walia will make a payment to the United States in the amount of eleven thousand six hundred and sixty-five dollars (\$11,665).

3. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases Walia PMC, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions, current or former corporate owners; and the corporate successors and assigns of any of them, and Dr. Walia from any civil or administrative

monetary claim the United States has for the Covered Conduct under any of the following: the FCA, 31 U.S.C. §§ 3729-3733; FIRREA, 12 U.S.C. § 1833a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or common law theories of breach of contract, payment by mistake, unjust enrichment or fraud. Together, Walia PMC and Dr. Walia are deemed the “Released Parties.”

4. Notwithstanding the releases given in Paragraph 3 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 the Agreement, any administrative liability or enforcement right, including the suspension and debarment rights of any federal agency;
- 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; and
- f. Any liability of individuals except Dr. Walia.

5. The Released Parties waive and shall not assert any defenses the Released Parties 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. The Released Parties fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the Released Parties have 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. The Released Parties 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.

7. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of the Released Parties and their present or former officers, directors, employees, shareholders, and agents in connection with:

- a. the matters covered by this Agreement;
- b. the United States' civil investigation of the matters covered by this Agreement;
- c. the Released Parties' investigation, defense, and corrective actions undertaken in response to the United States' civil investigation in connection with the matters covered by this Agreement (including attorneys' fees);
- d. the negotiation and performance of this Agreement; and
- e. the payment the Released Parties make to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as “Unallowable Costs”).

8. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by the Released Parties, and the Released Parties shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

9. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, the Released Parties shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by the Released Parties or any of their subsidiaries or affiliates from the United States. The Released Parties agree that the United States, at a minimum, shall be entitled to recoup from the Released Parties any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine the Released Parties’ books and records and to disagree with any calculations submitted by the Released Parties or any of their subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by the Released Parties, or the effect of any such Unallowable Costs on the amount of such payments.

10. This Agreement is intended to be for the benefit of the Parties only.

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

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

13. 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.

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

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

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

17. This Agreement is binding on the Released Parties' successors, transferees, heirs, and assigns.

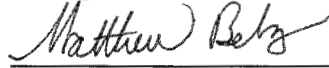
18. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

THE UNITED STATES

DATED: April 19, 2021

PHILLIP A. TALBERT
Acting United States Attorney

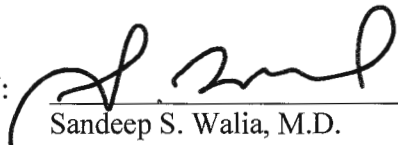
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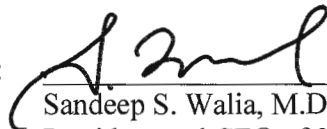
DATED: 4/21/21

BY: 

Sandeep S. Walia, M.D.

SANDEEP S. WALIA, M.D., A PROFESSIONAL
MEDICAL CORPORATION


DATED: 4/21/21

BY: 

Sandeep S. Walia, M.D.
President and CEO of Sandeep S. Walia, M.D., a
Professional Medical Corporation

APPROVED AS TO FORM AND CONTENT

DATED: 4/21/2021

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