

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice (the “United States”) and Dr. Labib E. Riachi, Riachi, Inc., and Center for Advanced Pelvic Surgery, LLC (collectively, the “defendants”). The United States and the defendants through their authorized representatives, are collectively referred to as the “Parties.”

RECITALS

A. Dr. Labib E. Riachi (“Dr. Riachi”) is an individual residing, doing business and practicing medicine in the State of New Jersey within the District of New Jersey.

B. Riachi, Inc. is a corporation with its principal place of business located in Westfield, New Jersey.

C. Center for Advanced Pelvic Surgery, LLC (“CAPS”) is a limited liability company with its principal place of business located in Westfield, New Jersey.

D. Dr. Riachi is the sole owner and primary physician of Riachi, Inc. and CAPS.

E. The United States contends that the defendants submitted or caused to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and the Medicaid Program (“Medicaid”), 42 U.S.C. §§ 1396-1396w-5.

F. On February 10, 2016, the United States filed a civil complaint (the “Complaint”) in the United States District Court for the District of New Jersey captioned

United States of America v. Labib E. Riachi, MD, Riachi, Inc., and Center for Advanced Pelvic Surgery, LLC (the “Civil Action”).

G. Covered Conduct. As set forth in the Civil Action, the United States contends that it has certain civil claims against the defendants under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, other federal statutes, or common law doctrines, for engaging in conduct relating to the submission of claims for services to Medicare and Medicaid. That alleged conduct described in the Complaint is incorporated by reference in this Paragraph G and is referred to below as the “Covered Conduct.”

H. This Agreement is neither an admission of any wrongdoing or any liability by the defendants, nor 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 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. The defendants shall pay to the United States a total of \$5,250,000 (the “Settlement Amount”) as follows:

(a) The defendants shall pay \$3,000,000 no later than five business days after the Effective Date of this Agreement (the “First Settlement Payment”); and

(b) The defendants shall pay to the United States \$2,250,000 no later than 45 days after the Effective Date of this Agreement (the “Second Settlement Payment”).

2. The defendants agree to pay the First Settlement Payment and the Second Settlement Payment to the United States by electronic funds transfer pursuant to written

instructions to be provided by the United States Attorney's Office for the District of New Jersey.

3. The Parties agree that:

(a) Upon receipt of the First Settlement Payment described above in Paragraph 1, the United States and the defendants shall promptly file in the Civil Action a joint request to stay the matter for 45 days.

(b) Upon timely receipt of the entire Settlement Amount in accordance with Paragraphs 1 and 2 above, the United States shall promptly file in the Civil Action a Stipulation of Dismissal of the Civil Action pursuant to Fed. R. Civ. P. 41(a)(1). Such dismissal of the Civil Action shall be with prejudice to the United States as to the Covered Conduct, and without prejudice to the United States as to any other claims.

(c) The defendants agree to execute contemporaneously with this Agreement a Consent Judgment in the amount of \$5,250,000 (the "Consent Judgment"). The Consent Judgment will be held by the United States Attorney's Office for the District of New Jersey and filed with the District Court only in the event of Default as defined in Paragraph 3(d) of this Agreement or after 120 days as provided in Paragraph 3(e) of this Agreement.

(d) In the event that the defendants fail to pay either the First Settlement Payment or the Second Settlement Payment within 30 calendar days of the date on which such payment is due, the defendants shall be in default of their payment obligations ("Default") under this Agreement. The United States will provide, via regular mail, notice of Default ("Notice of Default") to the defendants' undersigned attorneys, and the defendants shall have the opportunity to cure such Default within 15 business days from

the date of receipt of the Notice of Default. If the defendants fail to cure such Default within 15 business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount, including applicable interest, shall become immediately due and payable, and interest shall accrue at the rate of 5% per annum from the date of Default on the remaining unpaid balance.

The United States, at its sole discretion, may: (a) file the Consent Judgment, with any principal paid to the United States by the defendants under the terms of this Agreement credited against the Consent Judgment; (b) offset the remaining unpaid balance from any amounts due and owing to the defendants by any department, agency, or agent of the United States, at the time of Default; (c) collect the entire unpaid balance of the Settlement Amount, including applicable interest, plus interest, including 5% interest from the date of Default, and all other amounts due upon the event of Default as specified in this paragraph; (d) file a request with the District Court to lift the stay on the Civil Action, if any such stay is in effect, and prosecute the Civil Action; or (e) exercise any other rights granted by law or in equity, including referral of this matter for private collection.

In the event the United States must pursue and prosecute the Civil Action under subsection (d) of this Paragraph, the defendants agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories to the allegations in the Complaint, except to the extent such defenses were available to the defendants on the Effective Date of this Agreement. The defendants agree not to contest the Consent Judgment or any offset or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or

federal court, provided that the amount of the offset does not exceed the Settlement Amount, including applicable interest. The defendants shall pay the United States all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses.

(e) Notwithstanding any other provision in this Agreement, the United States, at its sole discretion, may file the Consent Judgment at any time after 120 days from the Effective Date of this Agreement if, at such time, the defendants have not paid the Settlement Amount in full, including applicable interest.

4. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon the defendants' full payment of the Settlement Amount, the United States releases the defendants 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, disgorgement, payment under mistake of fact and fraud.

5. Notwithstanding the release given in Paragraph 4 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) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement.

6. The defendants waive and shall not assert any defenses they 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.

7. The defendants fully and finally release 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 the defendants have asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. 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), any Medicaid contractor or any state payer, related to the Covered Conduct; and the defendants agree not to resubmit to any Medicare contractor, Medicaid contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

9. The defendants 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the defendants in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit and civil and criminal investigations of the matters covered by this Agreement;
- (3) the defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit and civil and criminal investigations in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment the defendants make to the United States pursuant to this Agreement

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 the defendants, and the defendants 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 the defendants to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, 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 the defendants 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. The defendants agree that the United States, at a minimum, shall be entitled to recoup from the 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 or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by the defendants on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on the defendants cost reports, cost statements, or information reports.

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

10. 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 11 (waiver for beneficiaries paragraph), below.

11. The defendants 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.

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

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

14. 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 District of New Jersey. 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.

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

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

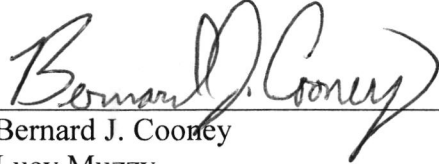
17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

18. This Agreement is binding on the defendants' successors, transferees, heirs, and assigns.

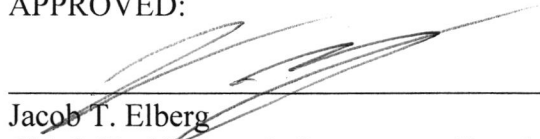
19. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

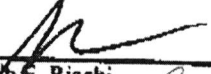
THE UNITED STATES OF AMERICA

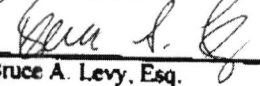
DATED: 7/12/2016 BY: 
Bernard J. Cooney
Lucy Muzzy
Assistant United States Attorneys
District of New Jersey

APPROVED:

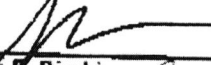

Jacob T. Elberg
Chief, Health Care & Government Fraud Unit
United States Attorney's Office
District of New Jersey

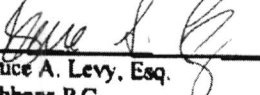
ON BEHALF OF DR. LABIB E. RIACHI

DATED: 2/12/16 BY: 
Dr. Labib E. Riachi


DATED: 2/12/16 BY: 
Bruce A. Levy, Esq.
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102
Counsel for Dr. Labib E. Riachi

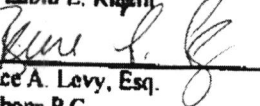
ON BEHALF OF RIACHI, INC.

DATED: 2/12/16 BY: 
Dr. Labib E. Riachi

DATED: 2/12/16 BY: 
Bruce A. Levy, Esq.
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102
Counsel for Riachi, Inc.

ON BEHALF OF CENTER FOR ADVANCED PELVIC SURGERY, LLC

DATED: 2/12/16 BY: 
Dr. Labib E. Riachi

DATED: 2/12/16 BY: 
Bruce A. Levy, Esq.
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102
*Counsel for Center for Advanced
Pelvic Surgery, LLC*