

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”) (collectively, the “United States”), Paul S. Koch, M.D. (“Dr. Koch”), and Michele Bisbano and Stefanie Paolino (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Dr. Paul S. Koch is a retired ophthalmologist who provided eye care services, including cataract surgeries, to patients through his Rhode Island-based practice, Koch Eye Associates, LLP (“Koch Eye Associates”), also known as Claris Vision, LLC (“Claris Vision”).

B. On April 4, 2018, Michele Bisbano and Stefanie Paolino filed a *qui tam* action in the United States District Court for the District of Rhode Island captioned *United States of America, the State of Rhode Island and the Commonwealth of Massachusetts, ex rel. Michele Bisbano and Stefanie Paolino v. Claris Vision, LLC, Claris Vision Holdings, LLC, Koch Eye Associates, LLP, Eye Health Associates of Rhode Island, LLC, Candescant Eye Surgicenter, LLC d/b/a St. James Surgery Center, and Paul S. Koch, M.D., Individually and in his official capacity, and John and Jane Does, 1 through 200*, C.A. No. 18-cv-176-MSM-LDA, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). On February 19, 2020, Relators filed an amended complaint further naming Candescant Eye Health Surgicenter, LLC; Eye Health Associates, LLC; Eye Health Associates, Inc.; Eye Health Associates SPN, LLC; Eli Global, LLC; ECL Group, LLC; and Century Vision Global, LLC as additional defendants. Relators alleged that the Defendants engaged in fraudulent practices through the use of financial kickbacks and sham co-management agreements in order to induce

referrals of patients receiving cataract surgeries and related procedures and services. More specifically, the complaint alleges that the Defendants made kickback payments to optometrists who had referred patients to the Defendants for cataract surgery, and whose patients chose to receive laser-assisted cataract surgery, which resulted in higher out-of-pocket payments by the patients. The complaint further alleges that the Defendants paid these kickbacks when optometrists referred Medicare beneficiaries to the Defendants, and sought reimbursement from Medicare for the cataract surgeries performed on patients for whom they paid kickbacks to referring optometrists. Within three business days of the Effective Date of this Agreement, the United States will intervene in the Civil Action as to the claims described in Paragraph D, *infra*, for the purpose of effectuating this settlement.

C. The United States contends that Dr. Koch submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”).

D. The United States contends that it has certain civil claims against Dr. Koch arising from payments that Dr. Koch, Koch Eye Associates, and Claris Vision made to optometrists who had referred cataract surgery patients to Dr. Koch, Koch Eye Associates and Claris Vision from January 1, 2013 through December 31, 2017. More specifically, the United States contends that Dr. Koch, through Koch Eye Associates and Claris Vision, paid financial kickbacks to referring optometrists whose patients elected to receive laser-assisted cataract surgery, for which patients paid up to \$2900 out-of-pocket per eye. The United States contends that these actions constituted illegal kickbacks under the anti-kickback statute, 42 U.S.C. § 1320a-7b(b), and resulted in the submission of false claims to Medicare under the False Claims Act, 31 U.S.C. § 3729, et. seq. That conduct is referred to below as the “Covered Conduct.”

E. Dr. Koch disputes the allegations and this Agreement is neither an admission of liability by Dr. Koch nor a concession by the United States that its claims are not well founded. This Agreement is made in compromise of disputed claims.

F. Relators claim entitlement under 31 U.S.C. § 3730(d)(1) and (d)(2) to a share of the proceeds of this Agreement and to Relators' reasonable expenses, attorneys' fees and costs. Dr. Koch disputes the Relators' claim for 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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Dr. Koch shall pay to the United States one million, one hundred and sixty-six thousand, and seventy-two dollars (\$1,166,072.00) ("Settlement Amount"), of which \$583,036.00 is restitution, no later than 14 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of Rhode Island.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$256,535.84 to Relators by electronic funds transfer ("Relators' Share").

3. The Relators and Dr. Koch will determine whether they will be able to enter into a separate agreement with respect to Dr. Koch's payment to Relators for expenses, attorneys' fees, and costs.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States releases Dr. Koch 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.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release Dr. Koch from any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, provided, however, that nothing in this Agreement shall preclude Relators from pursuing claims other than those included in the Covered Conduct, nothing in this Agreement shall preclude Relators from seeking to recover Relators' expenses or attorneys' fees and costs from Dr. Koch pursuant to 31 U.S.C. § 3730(d)(1) and (d)(2), and nothing in this Agreement shall prevent Relators from pursuing any claim under 31 U.S.C. § 3730(h) or R.I.G.L. 28-50-1 *et seq.*, all of which are fully preserved and not released, and nothing in this Agreement shall prevent Dr. Koch from asserting any and all defenses against the Relators that are not otherwise resolved herein.

6. Notwithstanding the releases given in Paragraph 4 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; and
- f. Any liability of individuals other than Dr. Koch.

7. Relators and their 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 Relators' receipt of the Relators' Share, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release Dr. Koch from any liability to Relators arising from the filing of the Civil Action, except as to claims that are not included in the Covered Conduct, including but not limited to claims for expenses or attorneys' fees and costs under 31 U.S.C. § 3730(d)(1) and (d)(2) and any claims under 31 U.S.C. § 3730(h) or R.I.G.L. 28-50-1 *et seq.*

9. Dr. Koch waives and shall not assert any defenses Dr. Koch 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.

10. Dr. Koch fully and finally releases 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 Dr. Koch 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 or the United States' investigation or prosecution thereof.

11. Dr. Koch fully and finally releases the Relators from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Dr. Koch has asserted, could have asserted, or may assert in the future against the Relators, related to the Civil Action and the Relators' investigation and prosecution thereof, with the exception of any claims made by Relators for attorneys' fees pursuant to 31 U.S.C. § 3730(d)(1) and (d)(2) and any claim under 31 U.S.C. § 3730(h) or R.I.G.L. 28-50-1 *et seq.*, which defenses are not released, and any claims for attorneys' fees that Dr. Koch may have against Relators for asserting claims against him individually pursuant to 31 U.S.C. § 3730(h) or R.I.G.L. 28-50-1 *et seq.*

12. 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 Dr. Koch 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.

13. Dr. Koch 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official

program directives promulgated thereunder) incurred by or on behalf of Dr. Paul S. Koch in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) Dr. Koch's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Dr. Koch makes to the United States pursuant to this Agreement and any payments that Dr. Koch may make to Relators, including costs and attorneys' 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 Dr. Koch, and Dr. Koch 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 Dr. Koch or any of his subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Dr. Koch further agrees that within 90 days of the Effective Date of this Agreement he 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 Dr. Koch, 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. Dr. Koch agrees that the United States, at a minimum, shall be entitled to recoup from Dr. Koch 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 Dr. Koch on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Dr. Koch or any of his affiliates' 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 Dr. Koch's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

14. Dr. Koch agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Dr. Koch shall encourage, and agrees not to impair, the cooperation of other individuals and entities, and shall use his best efforts to make available, and encourage, the cooperation of other individuals for interviews and testimony, consistent with the rights and privileges of such

individuals. Dr. Koch 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 his possession, custody, or control concerning any investigation of the Covered Conduct that he has undertaken, or that has been performed by another on his behalf.

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. Dr. Koch agrees that he 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.

17. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Partial Dismissal of the Civil Action pursuant to Rule 41(a)(1). The joint Stipulation of Partial Dismissal shall be with prejudice as to the Covered Conduct as it relates to Dr. Koch and with prejudice as to Relators' claims against Dr. Koch, except as set forth in Paragraph 5, above. The Joint Stipulation of Partial Dismissal shall not dismiss or otherwise affect the Relators' claims asserted against Claris Vision, LLC, Claris Vision Holdings, LLC, Koch Eye Associates, LLP, Eye Health Associates of Rhode Island, LLC, Candescant Eye Surgicenter, LLC d/b/a St. James Surgery Center, Candescant Eye Health Surgicenter, LLC, Eye Health Associates, LLC, Eye Health Associates, Inc., Eye Health Associates SPN, LLC, Eli Global, LLC, ECL Group, LLC, or Century Vision Global, LLC.

18. As a condition for Relators' agreement herein, including dismissal of Relators' claims with prejudice, Dr. Koch agrees that Relators and their attorneys are entitled to reasonable

expenses, attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d) and (d)(2); provided, however, Dr. Koch expressly reserves the right to challenge the amounts and reasonableness of Relators' claims for attorneys' fees, expenses, and costs, and the application of such claimed attorneys' fees, expenses and costs to him individually. Relators and Dr. Koch agree that the United States District Court shall have continuing jurisdiction to issue orders with regard to any disputes over the amounts for expenses, attorneys' fees and costs. Relators and Dr. Koch further agree that, should the parties be unable to reach an agreement on amounts, Relators may file a motion for attorneys' fees, costs and expenses in the District Court within 60 days of the date of dismissal seeking a determination by the Court.

19. Except as otherwise provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

21. 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 Rhode Island. 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.

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

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

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

25. This Agreement is binding on Dr. Koch's successors, transferees, heirs, and assigns.

26. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

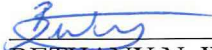
27. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

28. 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

DATED: 3/30/23

BY: ZACHARY A. CUNHA
United States Attorney



BETHANY N. WONG
Assistant United States Attorney
District of Rhode Island

DATED: 3/29/2023

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

PAUL S. KOCH, M.D.

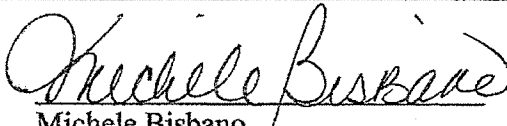
DATED: 3/29/23

BY: Paul S. Koch, M.D.
Paul S. Koch, M.D.


DATED: 3/30/23

BY: Pat K Koch
John A. Tarantino
Patricia K. Rocha
Peter A. DiBiase
Counsel for Paul S. Koch, M.D.

MICHELE BISBANO AND STEFANIE PAOLINO

DATED: 3-25-23 BY: 
Michele Bisbano

DATED: _____ BY: _____
Stefanie Paolino

DATED: 3/27/2023 BY: 
Louise Herman
Andrew Berg
Counsel for Michele Bisbano and Stefanie Paolino

MICHELE BISBANO AND STEFANIE PAOLINO

DATED: _____

BY: _____
Michele Bisbano

DATED: 03.27.23

BY: Stefanie Paolino
Stefanie Paolino

DATED: _____

BY: _____
Louise Herman
Andrew Berg
Counsel for Michele Bisbano and Stefanie Paolino