

SETTLEMENT AGREEMENT

I. Parties

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"), the State of Connecticut, acting through the Attorney General of the State of Connecticut (collectively the “State of Connecticut”); Jesus Villegas, DDS (“Villegas”), Fairfield Pediatric Dentistry, LLC (“Fairfield”), and Haven Pediatric Dentistry, LLC (“Haven”) (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

- A. Villegas is a dentist licensed to practice dentistry in Connecticut. Villegas owns and operates Fairfield and Haven, two pediatric dental practices.
- B. The United States and the State of Connecticut contend that Villegas, Fairfield, and Haven submitted or caused to be submitted claims for payment to the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w 5 (“Medicaid”).
- C. The United States and the State of Connecticut contend that they have certain civil claims against Villegas, Fairfield, and Haven arising out of Villegas, Fairfield, and Haven’s practice of regularly allowing employees who were not certified by the Dental Assisting National Board (“DANB”), because they had not completed the Radiation Health and Safety portion of the DANB exam, to take x-rays of Medicaid beneficiaries (DANB certification is a prerequisite for the taking of dental x-rays by dental assistants, pursuant to Conn. Gen. Statutes § 20-112a); and

Villegas, Fairfield, and Haven submitting or causing to be submitted false claims to Medicaid for the x-ray services taken by the employees who were not DANB certified, during the period June 1, 2010 through and including March 17, 2014. That conduct is referred to below as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by Villegas, Fairfield, and Haven nor a concession by the United States or the State of Connecticut that their claims are not well founded.

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. Villegas, Fairfield, and Haven agree to pay to the United States and the State of Connecticut pursuant to this Settlement Agreement, a total of One Million Three Hundred Sixty-Seven Thousand Four Hundred Sixty-Six Dollars (\$1,367,466) (the “Settlement Amount”).

Villegas, Fairfield, and Haven are jointly and severally liable for the Settlement Amount.

Villegas, Fairfield, and Haven agree that the Settlement Amount shall be satisfied as follows:

- (a). Villegas, Fairfield, and Haven shall pay One Hundred Fifty-Nine Thousand Six Hundred Seventy-Nine Dollars and Fifty-One Cents (\$159,679.51) to the United States and the State of Connecticut on 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 Connecticut.

(b). Villegas, Fairfield, and Haven agree to give up and release all right, title, and interest to all Medicaid funds that have been suspended and/or retained by the State of Connecticut, in the amount of One Million Two Hundred Seven Thousand Seven Hundred Eighty-Six Dollars and Forty-Nine Cents (\$1,207,786.49) (the “Suspended Amounts”). Villegas, Fairfield, and Haven agree that the calculation of the Suspended Amounts is accurate and that no further monies related to the Suspended Amounts are due and owing to Villegas, Fairfield, and Haven from the State of Connecticut or from the United States. Villegas, Fairfield, and Haven agree that the United States and the State of Connecticut shall retain the Suspended Amounts forevermore. Villegas, Fairfield, and Haven expressly relinquish any and all rights of any kind that they may have with respect to the Suspended Amounts, including, but not limited to, any and all claims or rights to have an overpayment determined, any and all rights to payment of those funds, and any and all rights to appeal, whether formally or informally and whether administratively or judicially, the right of the United States and/or the State of Connecticut to retain those funds, and any other rights Villegas, Fairfield, and Haven may have to challenge the Suspended Amounts in any respect. Villegas, Fairfield, and Haven further agree to execute any documents necessary to effectuate the release of Villegas, Fairfield, and Haven’s right, title, and interest in the Suspended Amounts.

2. Villegas, Fairfield, and Haven agree to implement a Compliance Program intended to prevent and/or detect fraud, waste and abuse in the CMAP, as follows:

(a). At a minimum, the Compliance Program shall include the implementation of written policies and procedures designed to ensure compliance with all applicable federal

and state statutes, regulations, and policies, including but not limited to, those statutes, regulations, and policies indicating that an individualized assessment (per patient, per radiograph) by a licensed dental hygienist or dentist is required to meet the definition of medical necessity, and should include the following:

i. Connecticut General Statute § 17b-259b (services must be medically necessary, including being “based on an assessment of the individual and his or her medical condition”);

ii. Regulations of Connecticut State Agencies § 17b-262-531 (payment limitations, including no payment for services “in excess of those deemed medically necessary and medically appropriate by the department to treat the client’s condition”);
and

iii. Medical Services Policy for Dental Services, § 184E.I.a (services covered and limitations, radiographs, including the rule that the Department will not pay for services in excess of those deemed medically necessary “to treat the recipient’s diagnosis, symptoms or medical history.”).

(b). Within ninety (90) days after the Effective Date of this Agreement, Villegas, Fairfield, and Haven shall submit a copy of the Compliance Program to the Attorney General certifying that the Compliance Program has been implemented (the First Certification). For a period of three (3) years from the Effective Date of this Agreement, Villegas, Fairfield, and Haven shall provide the Attorney General with an annual certification (the Annual Certification), certifying that the Compliance Program is in effect and adhered to by Villegas, Fairfield, and Haven. The Annual Certification shall be received by the Attorney General no later than the anniversary date of the due date of the First

Certification. The sunset of Villegas, Fairfield, and Haven's obligations to provide the Attorney General with the Annual Certifications after three (3) years does not relieve Villegas, Fairfield, and Haven of their obligation to maintain a Compliance Program while enrolled as a provider in the CMAP.

3. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Villegas, Fairfield, and Haven's full payment of the Settlement Amount, the United States releases Villegas, Fairfield, and Haven 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.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Villegas, Fairfield, and Haven's full payment of the Settlement Amount, the State of Connecticut releases Villegas, Fairfield, and Haven from any civil claims the State of Connecticut has, or could have asserted for the Covered Conduct under, Conn. Gen. Stat. §4-274 et seq. (Connecticut state False Claims Act), and the common law theories of payment by mistake, unjust enrichment, and fraud.

5. In consideration of the obligations of Villegas, Fairfield, and Haven in this Agreement and the Integrity Agreement (IA), entered into between OIG-HHS and Villegas, Fairfield, and Haven, and conditioned upon Villegas, Fairfield, and Haven's full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other

Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Villegas, Fairfield, and Haven under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 6 (concerning excluded claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Villegas, Fairfield, and Haven from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 6, below.

6. Notwithstanding the releases given in Paragraphs 3, 4, and 5 of this Settlement Agreement, or any other term of this Settlement Agreement, the following claims of the United States and the State of Connecticut are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any liability arising under the laws and regulations that are administered and enforced by the State of Connecticut Department of Revenue Services;
- c. Any criminal liability;
- d. Except as explicitly stated in this Settlement Agreement, any civil or administrative liability that any person or entity has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 4

above, including, but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

- e. Except as explicitly stated in this Settlement Agreement, any administrative liability to the United States, including mandatory exclusion from Federal health care programs;
- f. Except as explicitly stated in this Settlement Agreement, any administrative liability to the State of Connecticut Department of Social Services, including suspension from the CMAP;
- g. Any liability to the United States or the State of Connecticut (or their agencies) for any conduct other than the Covered Conduct;
- h. Any liability based upon obligations created by this Settlement Agreement;
- i. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- j. Any liability for failure to deliver goods or services due; and
- k. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Villegas, Fairfield, and Haven waive and shall not assert any defenses Villegas, Fairfield, and Haven 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 Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Settlement 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. Nothing in this paragraph or any other provision of this Settlement Agreement constitutes an agreement by the State of Connecticut concerning the characterization of the Settlement Amount for the purposes of the laws and regulations administered and enforced by the Connecticut Department of Revenue Services.

8. Villegas, Fairfield, and Haven fully and finally release the United States, the State of Connecticut, and their respective agencies, employees, servants, and agents from any claims in their official and individual capacities (including attorney's fees, costs, and expenses of every kind and however denominated) that Villegas, Fairfield, and Haven have asserted, could have asserted, or may assert in the future against the United States, the State of Connecticut, their respective agencies, employees, servants, and agents, related to the Covered Conduct and the United States' and the State of Connecticut's investigation and prosecution thereof.

9. 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 Villegas, Fairfield, and Haven agree not to resubmit to any Medicare carrier or

intermediary 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.

10. Villegas, Fairfield, and Haven agree to the following, if applicable:

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 Villegas, Fairfield, and Haven, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Settlement Agreement;
- (2) the United States' and the State of Connecticut's audit(s) and civil investigation(s) of the matters covered by this Settlement Agreement;
- (3) Villegas, Fairfield, and Haven's investigation, defense, and corrective actions undertaken in response to the United States' and the State of Connecticut's audit(s) and civil investigation(s) in connection with the matters covered by this Settlement Agreement (including attorney's fees);
- (4) the negotiation and performance of this Settlement Agreement; and
- (5) the payment Villegas, Fairfield, and Haven make to the United States and the State of Connecticut pursuant to this Settlement 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 Villegas, Fairfield, and Haven, and Villegas, Fairfield, and Haven shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or the State of Connecticut, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Villegas, Fairfield, and Haven or any of its subsidiaries or affiliates to the Medicare, Medicaid, ConnPACE, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Villegas, Fairfield, and Haven further agree that within 90 days of the Effective Date of this Settlement Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, ConnPACE and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Villegas, Fairfield, and Haven 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. Villegas, Fairfield, and Haven agree that the United States and the State of Connecticut, at a minimum, shall be entitled to recoup from Villegas, Fairfield, and Haven 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 and/or the State of Connecticut pursuant to the direction of the Department of Justice or the Connecticut Attorney General's Office, respectively, and/or the affected agencies. The United States and the State of Connecticut reserve their rights to disagree with any calculations submitted by Villegas, Fairfield, and Haven or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Villegas, Fairfield, and Haven or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

11. This Settlement 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 12 (waiver for beneficiaries paragraph), below.

12. Villegas, Fairfield, and Haven agree that they waive and shall not seek payment for any of the health care billings covered by this Settlement 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.

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

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

15. This Settlement Agreement is governed by the laws of the United States and the State of Connecticut. The exclusive jurisdiction and venue for any dispute relating to this Settlement Agreement is the United States District Court for the District of Connecticut, except that disputes only between the State of Connecticut and Villegas, Fairfield, and Haven will be resolved in Superior Court for the Judicial District of Hartford, Connecticut. For purposes of construing this Settlement Agreement, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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

19. This Settlement Agreement is binding on Villegas, Fairfield, and Haven's successors, transferees, heirs, and assigns.

20. All parties consent to the United States' and the State of Connecticut's disclosure of this Settlement Agreement, and information about this Settlement Agreement, to the public.

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

THE UNITED STATES OF AMERICA

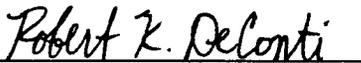
DATED: 8/24/16

BY: 
JOHN B. HUGHES
Assistant United States Attorney
Chief, Civil Division
District of Connecticut

DATED: 8/24/16

BY: 
RICHARD M. MOLOT
Assistant United States Attorney
District of Connecticut

DATED: 8/24/16

BY: 
ROBERT K. DECONTI
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

THE STATE OF CONNECTICUT

GEORGE JEPSEN
ATTORNEY GENERAL

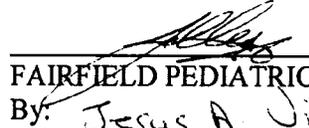
DATED: 8/23/16

BY: 

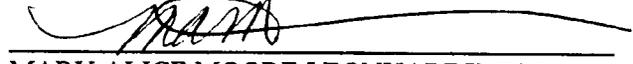
MICHAEL E. COLE
Chief, Antitrust and Government Program Fraud Department
KAREN S. HAABESTAD
NATASHA FREISMUTH
Assistant Attorney General
State of Connecticut

VILLEGAS, FAIRFIELD, AND HAVEN

DATED: 8-12-16 BY: 
DR. JESUS VILLEGAS

DATED: 8-12-16 BY: 
FAIRFIELD PEDIATRIC DENTISTRY, LLC
By: Jesus A. Villegas

DATED: 8-12-16 BY: 
HAVEN PEDIATRIC DENTISTRY, LLC
By: Jesus A. Villegas

DATED: 8-12-16 BY: 
MARY ALICE MOORE LEONHARDT, ESQ.
Moore Leonhardt & Associates LLC
Counsel for Villegas, Fairfield, and Haven

DATED: 8-12-16 BY: 
MARK KELLY, ESQ.
Counsel for Villegas, Fairfield, and Haven