

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”), and Roger R. Wang, D.O. (hereafter referred to as “Dr. Wang”) (Dr. Wang and the United States hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

- A. Dr. Wang is a physician who practices in San Francisco, California.
- B. The United States contends that Dr. Wang 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”).
- C. The United States contends that it has certain civil claims against Dr. Wang arising from the following conduct: The United States contends that Dr. Wang purchased versions of the drugs Synvisc and/or Synvisc One (collectively, “Synvisc”) and Orthovisc that were not approved by the Food and Drug Administration (“FDA”) for distribution in the United States and therefore were not covered by Medicare.¹ The United States further contends that these drugs were packaged and labeled for use in foreign markets and included, for example, labeling for additional uses not approved in the United States. The United States further contends that Dr. Wang injected the non-FDA approved Synvisc and Orthovisc in Medicare beneficiaries. The United States further contends that, between June 30, 2015 and December 1, 2019, Dr. Wang knowingly submitted claims to Medicare for reimbursement for the non-FDA-approved Synvisc and Orthovisc using claim codes reserved for FDA-approved Synvisc and

¹ The FDA regulates Orthovisc and Synvisc as devices.

Orthovisc. The United States further contends that, during the same period, Dr. Wang knowingly submitted claims to Medicare for reimbursement for the procedure in which he injected his patients with the non-FDA-approved Orthovisc and Synvisc, which Medicare does not cover. In total, the United States contends that Dr. Wang knowingly submitted thousands of false claims for reimbursement for non-FDA-approved Synvisc and Orthovisc and related procedures. This conduct is referred to below as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by Dr. Wang nor a concession by the United States that its 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. Dr. Wang shall pay to the United States \$1,033,666.42 (“Settlement Amount”), of which \$516,833.21 is restitution, plus interest on the unpaid Settlement Amount at 1.75% per annum from June 1, 2022 (“Interest”). Dr. Wang shall make an initial payment of \$250,000 on or before June 1, 2022. Dr. Wang shall pay the remaining \$783,666.42, plus Interest, in 6 monthly payments according to a payment plan to be provided by the Office of the United States Attorney for the District of Northern California. The payments shall be made by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of Northern California. The balance of the Settlement Amount may be prepaid at any time without penalty.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and subject to Paragraph 10 (concerning default), and upon the United States’ receipt of the Settlement Amount, plus Interest due under Paragraph 1, the United States releases Dr. Wang

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.

3. Notwithstanding the release given in Paragraph 2 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. Except as explicitly stated in this Agreement, any liability of individuals.

4. Dr. Wang waives and shall not assert any defenses Dr. Wang 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.

5. Dr. Wang 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 Dr. Wang has asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. 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. Wang 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.

7. Dr. Wang 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. Wang, his 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) Dr. Wang's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any 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. Wang makes 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 Dr. Wang, and Dr. Wang 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. Wang 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. Wang 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 Dr. Wang or any of his 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. Dr. Wang agrees that the United States, at a minimum, shall be entitled to recoup from Dr. Wang 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. Wang or any of his subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Dr. Wang or any of his 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 to audit, examine, or re-examine Dr. Wang's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

8. 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 9 (waiver for beneficiaries paragraph), below.

9. Dr. Wang 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.

10. In the event that Dr. Wang fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Dr. Wang shall be in Default of his payment obligations ("Default").

a. The United States will provide a written Notice of Default, and Dr. Wang shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Dr. Wang's counsel, or to

such other representative as Dr. Wang shall designate in advance in writing. If Dr. Wang fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, Dr. Wang agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Dr. Wang for the claims that would otherwise be covered by the releases provided in Paragraph 2 above, with any recovery reduced by the amount of any payments previously made by Dr. Wang to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action; (iii) offset the remaining unpaid balance from any amounts due and owing to Dr. Wang and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Dr. Wang agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States’ reasonable attorneys’ fees and expenses incurred in such an action. In the event that the United States opts to rescind this

Agreement pursuant to this paragraph, Dr. Wang waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against Dr. Wang within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement. Dr. Wang agrees not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

c. In the event of Uncured Default, OIG-HHS may exclude Dr. Wang from participating in all Federal health care programs until Dr. Wang pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Dr. Wang. Dr. Wang waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Dr. Wang wishes to apply for reinstatement, it must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Dr. Wang will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

11. In exchange for valuable consideration provided in this Agreement, Dr. Wang acknowledges the following:

a. Dr. Wang has reviewed his financial situation and warrants that he is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Dr. Wang, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Dr. Wang was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If Dr. Wang's obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Dr. Wang or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Dr. Wang's debts, or to adjudicate Dr. Wang as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Dr. Wang for all or any substantial part of Dr. Wang's assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Dr. Wang for the claims that would otherwise be covered by the releases provided in Paragraph 2 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Dr. Wang in the amount of \$3,360,000.00, less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Dr. Wang, a receiver, trustee, custodian, or other similar official for Dr. Wang;

f. Dr. Wang agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 11.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Dr. Wang shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Dr. Wang waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Dr. Wang that the release has been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of the Agreement.

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 into this Agreement without any degree of duress or compulsion.

14. 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 District of Northern 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.

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 Dr. Wang's 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 (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

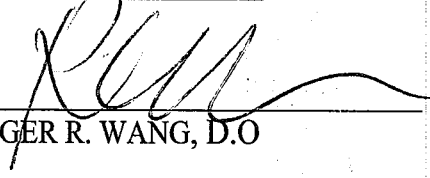
THE UNITED STATES OF AMERICA

DATED: _____ BY: Michael T. Pyle
Michael T. Pyle
Assistant United States Attorney
Northern District of California

DATED: 5/23/22 BY: Lisa M. Re
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

ROGER R. WANG, D.O

DATED: 05/22/22

BY: 
ROGER R. WANG, D.O

DATED: _____


BY: _____
J. MAXWELL COOPER
KESSENICK GAMMA & FREE LLP
Counsel for Dr. Wang

ROGER R. WANG, D.O

DATED: _____

BY: _____
ROGER R. WANG, D.O

DATED: May 23, 2022

BY: 

J. MAXWELL COOPER
KESSENICK GAMMA & FREE LLP
Counsel for Dr. Wang