

## 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 Health Care Authority of Lauderdale County and the City of Florence, Alabama d/b/a the Coffee Health Group, f/k/a Eliza Coffee Memorial Hospital (referred to herein as “Coffee Health Group”), and Relators Charles Bates and Craig Patrick (“Relators”), hereafter referred to as “the Parties”, through their authorized representatives.

### II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Coffee Health Group’s corporate offices are located at 205 Marengo Street, Florence, AL 35630. Coffee Health Group is a non-profit health care provider in the Florence, AL metropolitan area that provides patient care at Coffee Health Group and at its clinics and outpatient facilities.

B. Relators Charles Bates and Craig Patrick on May 29, 2008 filed a qui tam action in the United States District Court for the Western District of New York, Case Number [Under Seal], captioned United States ex rel. Charles Bates and Craig Patrick v. [Under Seal] (hereinafter “the Civil Action”).

C. The United States contends Coffee Health Group 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. §§ 1395-1395hhh.

D. The United States contends that it has certain civil claims, as specified in Paragraph 5 below, against Coffee Health Group for engaging in the following conduct: Coffee Health Group submitted inpatient DRG claims to Medicare for certain kyphoplasty procedures performed between May 1, 2003 and May 31, 2008 which were correctly billable only as outpatient or observation status procedures due to the absence of medical necessity for an inpatient level of service (hereinafter referred to as the "Covered Conduct").

E. The United States also contends that it has certain administrative claims against Coffee Health Group for engaging in the Covered Conduct.

F. This Agreement is neither an admission of liability by Coffee Health Group nor a concession by the United States that its claims are not well-founded.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a settlement pursuant to the Terms and Conditions below.

### **III. TERMS AND CONDITIONS**

1. Coffee Health Group agrees to pay the United States a total of six hundred seventy-six thousand and thirty-eight dollars (\$676,038.00), plus interest accrued thereon at the rate of 2.875% per annum from August 1, 2010, and continuing until and including the day before payment is made under this Agreement (the "Settlement Amount").

2. Coffee Health Group agrees to pay the Settlement Amount as described above to the United States by electronic funds transfer pursuant to written instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the Western District of New York. Coffee Health Group agrees to make this electronic funds transfer no later than 20 business days after the Effective Date of this Agreement.

3. Following receipt of written instructions from Relators, Coffee Health Group agrees to pay to Relators an aggregate total of \$10,000.00 pursuant to 31 U.S.C. § 3730(d) for expenses and attorney's fees and costs arising from the filing of the Civil Action.

4. Contingent upon the United States receiving the Settlement Amount from Coffee Health Group, and as soon as feasible after receipt, the United States agrees to pay \$118,306.65 to Relators, by electronic funds transfer, pursuant to 31 U.S.C. § 3730(d) ("Relator Share").

5. Subject to the exceptions in Paragraph 8 (concerning excluded claims), below, in consideration of the obligations of Coffee Health Group in this Agreement, conditioned upon Coffee Health Group's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Coffee Health Group, together with its current or former officers, directors, and employees from any civil or administrative monetary claim the United States has or may have 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.

6. Subject to the exceptions in Paragraph 8 (concerning excluded claims), below, in consideration of the obligations of Coffee Health Group in this Agreement, conditioned upon Coffee Health Group's full payment of the Settlement Amount and the amount specified in Paragraph 3, above, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, agree to release Coffee Health Group, together with its current or former officers, directors, and employees from any civil monetary claim the Relators have or may have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733. Contingent upon payment of the Settlement Amount and the amount specified in Paragraph III.3 above, Relators, individually and for their heirs, successors, attorneys, agents and employees, further agree to release Coffee Health Group and its officers, agents and employees from any liability to Relators arising from the filing of the Civil Action, or otherwise under 31 U.S.C § 3730(d), for attorney's fees and costs.

7. OIG-HHS expressly reserves all rights to institute, direct, or maintain any administrative action seeking exclusion against Coffee Health Group and/or its current or former officers, directors, and employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion).

8. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Coffee Health Group and Relators) are the following claims of the United States:

a. Any civil, criminal, or administrative 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 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 such obligations as are created by this Agreement;

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and

g. Any liability for failure to deliver goods or services due.

9. Relators and their heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and, conditioned upon receipt of the Relator Share (as defined in Paragraph 4 above), Relators, individually, and for their heirs, successors, agents, and assigns, fully and finally release, waive, and forever discharge the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 for the Covered Conduct to the extent it was performed by the settling defendant hospital named in Section I of this Agreement; from any claims arising from the filing of the portion of the Civil Action that concerns the Covered Conduct and only to the extent the Covered Conduct was performed by the settling defendant hospital named in Section I of this Agreement; and from

any other claims for a share of the Settlement Amount; and in full settlement of any claims Relators may have against the United States under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relators arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

10. Coffee Health Group waives and shall not assert any defenses Coffee Health Group 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.

11. Coffee Health Group fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Coffee Health Group has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Civil Action, the Covered Conduct, and the United States' investigation and prosecution thereof.

12. Coffee Health Group fully and finally releases the Relators from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Coffee Health Group has asserted, could have asserted, or may assert in the future against the Relators, related to the Covered Conduct and the Relators' investigation and prosecution thereof.

13. 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 carrier or intermediary or any state payer, related to the Covered Conduct; and Coffee Health Group agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

14. Coffee Health Group agrees to the following:

a. Unallowable Costs Defined: that 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. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Coffee Health Group, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "Unallowable Costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (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) Coffee Health Group's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Coffee Health Group makes to the United States pursuant to this Agreement and any payments that Coffee Health Group may make to Relators, including costs and attorneys fees.

(All costs described or set forth in this paragraph 14.a. are hereafter "Unallowable Costs.")

b. Future Treatment of Unallowable Costs: these Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by Coffee Health Group, and Coffee Health Group 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 Coffee Health Group or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Coffee Health Group 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 Coffee Health Group 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. Coffee Health Group agrees that the United States, at a minimum, shall be entitled to recoup from Coffee Health Group 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 Coffee Health Group or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Coffee Health Group or any of its 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 Coffee Health Group's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

15. This Agreement is intended to be for the benefit of only the Parties. The Parties do not release any claims against any other person or entity, except to the extent provided for in paragraph 16 below concerning waiver for beneficiaries.

16. Coffee Health Group agrees that it 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 the Covered Conduct.

17. Coffee Health Group warrants that it has reviewed its financial situation and that it currently 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. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Coffee Health Group, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Coffee Health Group was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

18. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Coffee Health Group commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Coffee Health Group's debts, or seeking to adjudicate Coffee Health Group as bankrupt or insolvent; or (b) seeking appointment

of a receiver, trustee, custodian, or other similar official for Coffee Health Group or for all or any substantial part of Coffee Health Group's assets, Coffee Health Group agrees as follows:

a. Coffee Health Group's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Coffee Health Group shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Coffee Health Group's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Coffee Health Group was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Coffee Health Group.

b. If Coffee Health Group'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, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Coffee Health Group for the claims that would otherwise be covered by the releases provided in Paragraphs 5, 6, and 7, above. Coffee Health Group agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Coffee Health Group shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Coffee Health Group 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 claims, actions, or proceeding that are brought by the United States within 120 calendar days of written notification to Coffee Health Group that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on May 29, 2008; and (iii) the United States has a valid claim against Coffee Health Group in the amount of \$1,836,384.00, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Coffee Health Group acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

19. Upon receipt of the payment described in Paragraph 1, the United States and Relators shall promptly sign and file in the Civil Action a Notice of Intervention for only Coffee Health Group and a Joint Stipulation of Dismissal with prejudice of the Civil Action for only Coffee Health Group pursuant to the terms of this Agreement.

20. Except as expressly provided to the contrary 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.

21. Coffee Health Group represents this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. Relators represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

23. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Western District of New York.

24. For purposes of construction, 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.

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

26. The individuals signing this Agreement on behalf of Coffee Health Group represent and warrant they are authorized by Coffee Health Group to execute this Agreement. The individual(s) signing this Agreement on behalf of Relators represent and warrant they are authorized by Relators to execute this Agreement. The United States signatories represent they are signing this Agreement in their official capacities and are authorized to execute this Agreement.

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

28. This Agreement is binding on Coffee Health Group's successors, transferees, heirs, and assigns.

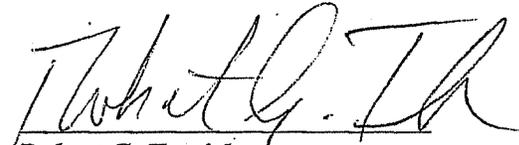
29. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

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

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

The United States of America

DATED: 11-10-10



---

Robert G. Trusiak  
Assistant U.S. Attorney  
Western District of New York

and

DATED: \_\_\_\_\_

---

Colin Huntley  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

and

DATED: 11/8/10



---

Gregory E. Demske  
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

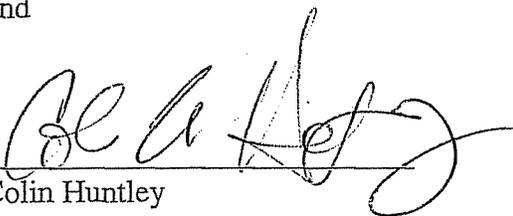
The United States of America

DATED: \_\_\_\_\_

\_\_\_\_\_  
Robert G. Trusiak  
Assistant U.S. Attorney  
Western District of New York

and

DATED: 10/4/2010

  
\_\_\_\_\_  
Colin Huntley  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

and

DATED: \_\_\_\_\_

\_\_\_\_\_  
Gregory E. Demske  
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

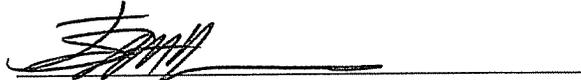
The Health Care Authority of Lauderdale County and the City of Florence, Alabama  
d/b/a the Coffee Health Group,  
f/k/a Eliza Coffee Memorial Hospital

DATED: 9-29-10



Dewey D. Mitchell  
Chairman of the Board for The Health Care Authority  
of Lauderdale County and the City of Florence, Alabama

DATED: 9-30-10



J. Scott Newton, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
Counsel for The Health Care Authority of Lauderdale  
County and the City of Florence, Alabama  
d/b/a the Coffee Health Group

Relators

DATED: \_\_\_\_\_

\_\_\_\_\_  
Charles Bates  
Relator

DATED: \_\_\_\_\_

\_\_\_\_\_  
Craig Patrick  
Relator

DATED: 9/24/2010

Mary Louise Cohen  
Mary Louise Cohen  
Counsel for Relators

Relators

DATED: 9/20/10



Charles Bates  
Relator

DATED: \_\_\_\_\_

\_\_\_\_\_  
Craig Patrick  
Relator

DATED: \_\_\_\_\_

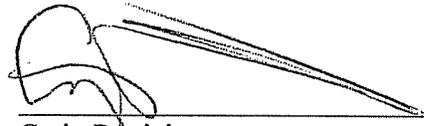
\_\_\_\_\_  
Mary Louise Cohen  
Counsel for Relators

Relators

DATED: \_\_\_\_\_

\_\_\_\_\_  
Charles Bates  
Relator

DATED: 9-20-10

  
\_\_\_\_\_  
Craig Patrick  
Relator

DATED: \_\_\_\_\_

\_\_\_\_\_  
Mary Louise Cohen  
Counsel for Relators