

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made this 19th day of April 2010, by and among Plaintiffs and substituted Plaintiffs Paul Janigian, personal representative of the estate of Richard Janigian, Jr. (“Plaintiffs”), and Defendants District of Columbia (“District”), the Mayor of the District of Columbia, and others in their official capacities (“Defendants”) (collectively referred to herein as the “Parties” or individually as a “Party”) in the action commenced on or about March 17, 2007, in the United States District Court for the District of Columbia (“Court”) and captioned “*Janigian, et al. v. District of Columbia, et al.*,” Civil Action No. 508-07-PLF (“Settling Action”), in which Plaintiffs brought various claims concerning the Medicaid program administered by the District (“D.C. Medicaid Program,” or “Program”), pursuant to, 42 U.S.C. §§ 1396, *et seq.* (“Medicaid Act”), relating to the treatment of expenses incurred prior to eligibility for medical or remedial care that are not subject to payment by a third party, including necessary medical or remedial care recognized under District of Columbia law but not covered under the District’s State Plan (“pre-eligibility medical expenses” or “PEME”), *see* 42 U.S.C. § 1396a(r)(1)(A), from the amount of a Medicaid recipient’s obligation to contribute to the cost of his or her long-term care under D.C. Medicaid (“Payability Amount”).

NOW THEREFORE, in consideration for the mutual promises set forth below and other consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties stipulate, agree, and acknowledge as follows:

1. This Agreement is a contract binding upon the Parties, their agents, officials, employees, servants, personal representatives, and designees. This Agreement is not a consent decree and the Court shall not retain jurisdiction over the Settling Action.
2. Nothing in this Agreement is an admission of liability, duty, or wrongdoing by either Party or an admission that that any policy, practice, or procedure of the District of Columbia at any time or in any way violated federal or District law. The Defendants deny all liability in the Settling Action.
3. Release. In exchange for the payments described in Paragraphs 6 and 8 herein, Plaintiffs, for themselves and their heirs, successors, executors, administrators and assigns, agrees to forever discharge, acquit, and release all Defendants, and all of their respective past, present, and future successors, assigns, representatives, administrators, officials, employees, servants, and agents, in their individual and official capacities, from any and all actions, causes of actions, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts, reckonings, demands, and benefits (including attorneys’ fees and costs actually incurred), of whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or unmatured, now existing or having ever existed from the beginning of time to the date of execution of this Agreement, which were asserted or could have been asserted by a Plaintiff or any person claiming by, through or under any Plaintiff in the Settling Action or in any other proceeding or forum, provided

however, that this release shall be null and void as to Defendant District of Columbia only if and at such time as the Settling Action is reinstated as provided in Paragraph 5.

4. Dismissal of the Settling Action. At the time this Agreement is executed, the Parties shall sign and within five (5) days thereafter file with the Court the attached Joint Motion Requesting Dismissal of the Settling Action Without Prejudice (“Joint Motion”). Eighteen (18) months after the Court grants dismissal on the terms set forth in the Joint Motion, the plaintiffs may file a motion to reinstate their claims. The parties agree that such a motion may be granted only upon a showing by plaintiffs that at the end of the 18 month period, defendant remains substantially out of compliance with the settlement. The motion to reinstate may not be filed before the expiration of the 18 month period and must be filed within 30 days of the expiration of the 18 month period. If the Court denies the motion to reinstate the case or plaintiffs fail to timely seek to reinstate this lawsuit, the dismissal shall stand as “dismissed with prejudice”. If the Settling Action is reinstated as provided herein: (1) the case shall be returned to the status quo existing at the time of the dismissal, and the parties shall jointly seek appropriate relief to secure scheduling of the remaining proceedings; and (2) the District shall not assert the statute of limitations or the doctrine of laches with respect to the period during which the case was dismissed. If, at any point during the eighteen (18) month period referenced herein Plaintiffs believe they will have cause to reinstate the Settling Action, they shall notify the District in writing within twenty (20) days of Plaintiffs’ knowledge of the action(s) or inaction(s) giving rise to that belief.

5. Program Requirements. Within one-hundred twenty (120) days of the execution of this Agreement, the District shall implement the following changes in the D.C. Medicaid Program (if not existing prior to that time), subject to any changes in federal or District law, rule, or regulation:

- a. At intake, the District shall treat PEME as a required deduction from the applicant’s Payability Amount, except when such expenses have been counted towards Medicaid Spend-Down or previously applied as PEME. PEME shall include the cost of room and board from providers of Medicaid long-term care, as well as costs incurred prior to initial eligibility for a community-based, long-term care waiver program administered by the District.
- b. The District shall use a form of its choosing (paper or electronic) to obtain information from applicants for Medicaid long-term care in any manner it chooses that includes: a distinct inquiry as to whether the applicant has any PEME and an opportunity to provide the amount thereof; notice that the District will consider the applicant’s PEME; and notice to the applicant to provide evidence of PEME.
- c. The District shall use a procedure to process applications for Medicaid long-term care benefits under D.C. Medicaid that includes: the creation of a record (which, at the time of this Agreement, the parties agree is the D.C. Medicaid PEME Determination Form) that includes the amount of the PEME

deduction allowed, the amount(s) for each item requested by the applicant but not allowed and the reason(s) therefor, and a calculation of the month-to-month effect on Payability Amount of the PEME deduction, including any carryover amount for future eligibility periods; the issuance to the applicant, or the applicant's authorized representative, of a copy of the record; the opportunity for the applicant to seek reconsideration by the District of its decision, if any, to disallow any PEME requested by the applicant, within ten (10) days of receipt of the District's decision; and a written response by the District to any request for reconsideration within twenty-one (21) days.

d. The District shall provide training that includes: in-person training for District employees with direct responsibility for Medicaid long-term care eligibility, concerning the requirements of this Paragraph, including training of all existing employees within seven (7) months of the execution of this Agreement and the training of all new employees within forty-five (45) days of their assignment to active long-term care cases; and training for Providers, within one-hundred twenty (120) days of the execution of this Agreement, concerning the requirements of this Paragraph.

6. Payments to Plaintiffs. Within ninety (90) days of the execution of this Agreement, the District shall pay Plaintiffs the following sum: \$15,445.11 in full and final settlement of their claims in the Settling Action.

7. Provision of Information. During such time as the Settling Action remains dismissed without prejudice as provided in Paragraph 4, the District shall: (1) no later than fifteen (15) days prior to the issuance of any substantive changes to the District's Income Maintenance Administration ("IMA") Policy Manual relating to PEME, or any other document that sets forth a policy or procedure of the Program relating directly to PEME, serve a copy of such document(s) upon Plaintiffs' Attorneys; and (2) on a quarterly basis, provide Plaintiffs' Attorneys with information (including, at the District's option, aggregate data from a computer information system, if such data is available) from IMA demonstrating the District's compliance with the requirements of Paragraph 5 within the quarter ending no less than thirty (30) days prior to the provision of the information. The District may provide the foregoing information in any reasonable form of its choosing and no formal report shall be required.

8. Attorneys' Fees and Costs. Within ninety (90) days of the execution of this Agreement, the District will pay, or cause to be paid, the following sum to Plaintiffs' Attorneys in the manner in which the Plaintiffs' Attorneys shall direct in writing: attorneys' fees and costs in the amount of Two-Hundred Eighty-Three Thousand Dollars (\$283,000.00). The parties agree that in an "appropriate case," the Court may impose an award of attorney's fees and costs incurred in connection with an Order issued by the Court in response to a motion to reinstate the Settling Action pursuant to paragraph 4. An "appropriate case" is one in which plaintiffs are a prevailing party by the terms of the said Order, and have met their burden to prove compensable fees and costs. The parties further

agree that defendants retain the right to challenge plaintiffs' application or motion for fees and costs.

9. Notice. Service of any information or documents required or necessitated by this Agreement shall be made to the following persons to such other persons as they may designate in writing. If upon Plaintiffs or their attorneys by both email and first-class mail to:

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200-A Monroe Street, Suite 110
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rml@ronmlandsman.com

René H. Reixach
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Cyril V. Smith
William K. Meyer
Zuckerman Spaeder LLP
100 East Pratt Street, Suite 2440
Baltimore, MD 21202
csmith@zuckerman.com
wmeyer@zuckerman.com

If upon the District or its attorneys by both email and first-class mail to:

Ellen Efros
Chief, Equity Section I
Office of the Attorney General
for the District of Columbia
441 Fourth Street, N.W., 6th Flr. No.
Washington, D.C. 20001
ellen.efros.lerner@dc.gov

Jacques Lerner
Assistant Attorney General
Office of the Attorney General
for the District of Columbia
441 Fourth Street, N.W., 6th Flr. No.
Washington, D.C. 20001
jacques.lerner@dc.gov

10. Entire Agreement. This Agreement constitutes the entire understanding between the Parties hereto and is intended as the complete and exclusive statement of the agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and negotiations thereto. All Exhibits attached hereto are incorporated herein by reference and made a part of this Agreement.

11. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

12. Capacity and Authority. The undersigned representatives of the Parties certify that they are fully authorized to enter into and to execute the terms and conditions of this Agreement and to make such Agreement fully and legally binding upon and enforceable against the Party on whose behalf they have executed this Agreement. The individuals signing for the District of Columbia are its officials acting within the scope of their

authority. The Parties stipulate, agree and warrant that they will not challenge or contest in any way the capacity or the authority of any party hereto to make the agreements, covenants, and stipulations herein.

13. Best Efforts. The District agrees to make best efforts to secure any approvals that may be necessary to implement fully the terms and conditions of this Agreement.

14. No Creation of Rights. This Agreement creates no obligations or duties on the part of Parties other than as stated specifically in this Agreement. The Parties stipulate, agree, and acknowledge that nothing in this Agreement may be used by any person or entity for any purpose in any legal proceeding other than by Plaintiffs as stated specifically in this Agreement. An alleged violation of this Agreement shall not create a new, independent private right of action for anyone other than the Parties hereto, and the Parties agree that this Agreement does not permit enforcement proceedings on behalf of individuals. The Parties stipulate, agree, and acknowledge that neither this Agreement, nor the proposed Order, is intended to create any third party beneficiaries. The Parties further stipulate, agree, and acknowledge that no applicant may appeal a PEME determination to any administrative or judicial body, nor seek any legal or equitable relief, as a result of or in connection with this Agreement.

15. Freedom of Information Act. Plaintiffs agree that while the Settling Action remains dismissed without prejudice pursuant to Paragraph 4, they shall not cause or allow a Freedom of Information Act request to be submitted to the District, by them or by any person acting on their behalf, seeking records identified in this Agreement, that are the subject of this Agreement, or which would be discoverable in the Settling Action

16. Amendments and Modifications. This Agreement may not be amended or modified in any respect other than by an agreement in writing signed by all Parties.

17. Construction. This Agreement shall be construed without regard to any presumption or other rule of law requiring construction against the party who caused it to have been drafted.

18. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the District of Columbia.

19. Consultation with Counsel and Understanding of Terms. The Parties have read this Agreement, have had a full opportunity to consult (and have in fact consulted) with legal counsel with regard to it, and have signed this Agreement voluntarily and freely and with the full understanding of its terms. The Parties further understand and agree that each has relied wholly upon its own judgment, belief and knowledge of the nature, extent, effect and duration of the Settling Action, and enter into this Agreement without reliance upon any statements or representations by any other Party or its representatives except those expressly set forth herein. Each Party waives and assumes the risk of any

and all claims which exist as of the date of this Agreement or in the future, which that Party does not know of or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise with respect to either facts or law, and which, if known, would materially affect its decision to enter into this Agreement.

20. Non-assignment. None of the obligations and duties of any Party set forth in this Agreement may be assigned or delegated to any other person without the express, prior written consent of all other Parties.

21. Notifications. Upon reasonable request by Plaintiffs, the District shall keep Plaintiffs informally advised, from time-to-time, of its compliance with Paragraph 7 of this Agreement.

22. Severability. This Agreement is not severable.

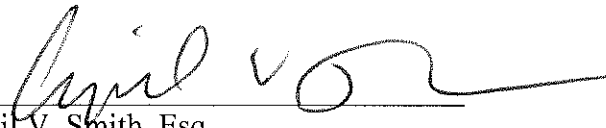
23. Counterparts. Provided that all parties hereto execute a copy of this Agreement, the Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile transmission or other comparable means. This Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory required hereby.

WITNESS:

FOR PLAINTIFFS:

By: _____
Ron M. Landsman, Esq.
RON M. LANDSMAN, P.A.
200-A Monroe Street, Suite 110,
Rockville, Maryland 20850

Date: _____

By: 
Cyril V. Smith, Esq.
William K. Meyer, Esq.
ZUCKERMAN SPAEDER LLP
100 East Pratt Street, Suite 2440
Baltimore, Maryland 21202

Date: 4/20/10

By: René H. Reixach, Esq.
WOODS OVIATT GILMAN LLP
700 Crossroads Bldg.
2 State Street
Rochester, New York 14614

Date: _____

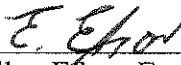
Attorneys for Plaintiffs

FOR DEFENDANTS:

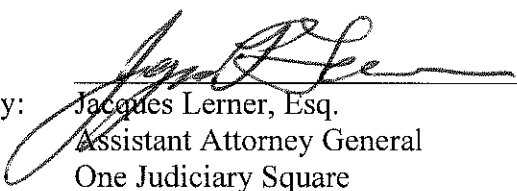
OFFICE OF THE ATTORNEY GENERAL
FOR THE DISTRICT OF COLUMBIA

PETER J. NICKLES
Attorney General, District of Columbia

GEORGE C. VALENTINE
Deputy Attorney General,
Civil Litigation Division


By: Ellen Effros, Esq.
Chief, Equity Section I

Date: 4/19/10


By: Jacques Lerner, Esq.
Assistant Attorney General
One Judiciary Square
441 Fourth Street, N.W.
Washington, D.C. 20001

Date: 4-19-10

Attorneys for Defendants

Settlement Agreement
Janigian v. District of Columbia
April 19, 2010
Attachment

month period;

- c. If the Court denies the motion to reinstate the case or plaintiffs fail to timely seek to reinstate this lawsuit, the dismissal shall stand as “dismissed with prejudice”; and
- d. If the Settling Action is reinstated as provided herein: (1) the case shall be returned to the *status quo* existing at the time of the dismissal, and the parties shall jointly seek appropriate relief to secure scheduling of the remaining proceedings; and (2) the District shall not assert the statute of limitations or the doctrine of laches with respect to the period during which the case was dismissed.

WHEREFORE, the parties respectfully request that this Court enter an Order that provides for:

A. Dismissal of this action without prejudice, subject to the right of Plaintiff to file a motion to reinstate his claims as set forth in the Settlement Agreement;

B. In the event the Court denies the motion to reinstate the case or Plaintiff fails to timely seek to reinstate this lawsuit as set forth in the Settlement Agreement, the dismissal shall be with prejudice; and

C. In the event this action is reinstated, the case shall be returned to the *status quo* existing at the time of the dismissal.

In support of their Joint Motion, the parties respectfully refer the Court to the accompanying Memorandum of Points and Authorities. An appropriate proposed Order also accompanies these papers.

Dated: April 19, 2010.

Respectfully submitted,

FOR PLAINTIFF:

/s/

Cyril V. Smith
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Chief, Equity Section I

/s/

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/s/

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ORDERED that, if this action is reinstated pursuant to a motion to reinstate, (1) the case shall be returned to the *status quo* existing at the time of this dismissal; (2) the parties shall jointly seek appropriate relief to secure scheduling of the remaining proceedings; and (3) the District shall not assert the statute of limitations or the doctrine of laches with respect to the period during which the case was dismissed.

Date

United States District Judge