

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (Agreement) is entered into by the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of Agriculture (USDA) (hereafter the United States), and the Wisconsin Department of Health Services (WDHS), through their authorized representatives. The United States and the WDHS are hereinafter collectively referred to as the "Parties."

### II. PREAMBLE

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

A. The WDHS is a state agency established by the State of Wisconsin to protect and promote the public health and safety of the people of Wisconsin. As part of its responsibilities, the WDHS administers public benefit programs aimed at promoting public health and safety.

B. The USDA administers the Supplemental Nutrition Assistance Program (SNAP), which provides financial assistance to eligible low-income individuals and families to purchase food in order to reduce hunger and improve nutrition. States, including Wisconsin, oversee the distribution of SNAP benefits to eligible resident recipients and are also reimbursed by USDA for a portion of their SNAP administrative costs. In Wisconsin, WDHS is the agency responsible for overseeing and administering the SNAP program.

C. The United States contends that it has certain civil claims against WDHS

arising from the USDA's payment of SNAP accuracy performance bonuses and reimbursement of SNAP administrative quality control costs for the time period between October 1, 2008 and September 30, 2012, based on the conduct described in Attachment A, which hereafter shall be referred to as the "Covered Conduct".

D. The Parties agree the facts set forth in Attachment A are true and correct. The Parties further agree that nothing in this Agreement is an admission of liability by the Defendants, nor a concession by the United States that its claims are not well-founded.

E. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

### III. TERMS AND CONDITIONS

1. WDHS shall pay to the United States the sum of \$6,991,905 (hereafter referred to as the "Settlement Amount"), by electronic funds transfer pursuant to written instructions to be provided by the United States, in accordance with the following payment schedule:

a. \$1,000,000 shall be paid no later than 15 days after the Effective Date of this

Agreement;

b. \$1,000,000 shall be paid by June 30, 2017; and

c. \$4,991,905 shall be paid by June 30, 2018.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims)

below, in consideration of the obligations of WDHS set forth in this Agreement, and conditioned upon full payment of the Settlement Amount as described in Paragraph 1 above, the United States (on behalf of itself, its officers, agents, agencies, and departments) releases WDHS from any 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, 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 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, including the suspension and debarment rights of any federal agency;
- 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.

4. WDHS 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 WDHS 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 and the United States' investigation and prosecution thereof.

5. WDHS waives and shall not assert any defenses WDHS 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 Title 26 of the United States Code (the Internal Revenue Code).

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of WDHS, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audits and civil investigations of the

matters covered by this Agreement;

(3) WDHS's investigation, defense, and corrective actions undertaken in response to the United States' audits and civil investigations in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement;

(5) the payment WDHS makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by WDHS, and WDHS shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, WDHS shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by WDHS or any of its offices, divisions, agencies or departments from the United States. WDHS agrees that the United States, at a minimum, shall be entitled to recoup from WDHS any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine,

or re-examine WDHS's books and records and to disagree with any calculations submitted by WDHS or any of its offices, divisions, agencies or departments regarding any Unallowable Costs included in payments previously sought by WDHS, or the effect of any such Unallowable Costs on the amount of such payments.

7. WDHS agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, WDHS shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees with the United States' investigation of individuals and entities not released in this Agreement, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. WDHS 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 its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

8. This Agreement is intended to be for the benefit of the Parties only.

9. All Parties represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

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

11. 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 Western District of Wisconsin. 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.

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

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

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

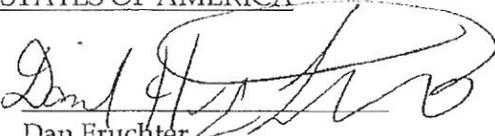
15. This Agreement is binding on WDHS's successors, transferees, and assigns.

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

17. 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.

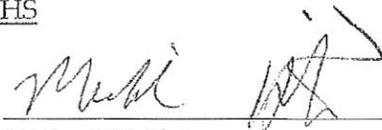
FOR THE UNITED STATES OF AMERICA

DATED: 4/12/2017

BY:   
Dan Fruchter  
Assistant United States Attorney  
Western District of Wisconsin  
United States Department of Justice

FOR WDHS

DATED: 04-12-17

  
Michael Heifetz  
Director, Division of Medicaid Services  
Wisconsin Dep. of Health Services

**ATTACHMENT A TO SETTLEMENT AGREEMENT**  
**STATEMENT OF FACTS**

The following Statement of Facts is incorporated by reference as part of the settlement agreement (the "Agreement") between the United States of America, acting through the Department of Justice, Civil Division, and the United States Attorney's Office for the Western District of Wisconsin (collectively, the "United States"), and the Wisconsin Department of Health Services (WDHS). The United States and WDHS agree that the following facts are true and correct:

**Background**

1. The Supplemental Nutrition Assistance Program ("SNAP") provides financial assistance to low-income individuals and families for food purchases and is jointly administered by the U.S. Food and Nutrition Service ("FNS") and state agencies. In Wisconsin, SNAP is supervised and administered by WDHS. As the state agency responsible for ensuring that SNAP funds are appropriately allocated to recipients, WDHS is required to ensure adherence to the procedures outlined in the FNS 310 Handbook ("310 Manual," or "FNS 310").

2. FNS 310 requires state agencies receiving SNAP benefits to perform quality control ("QC", or also referred to herein as Quality Assurance "QA") reviews of SNAP eligibility and allotment determinations. Both WDHS and FNS conduct QC assessments of a sample of SNAP cases to determine whether the original benefit award in a particular case was correct, and whether there were any changes in the recipient's circumstances that were not appropriately accounted for in subsequent

allotment decisions. The QC process is designed to generate an objective measure of a state or local agency's performance in determining eligibility for and allotment of SNAP benefits. Based on data obtained during the QC process and submitted by the state to FNS, FNS calculates each state's payment accuracy rate, or "error rate," in its initial and subsequent eligibility and allotment determinations.

3. The SNAP QC error rate is an important measurement used for two primary purposes. First, it is the basis for awarding state bonuses for high payment accuracy and assessing state penalties for poor performance. Bonuses are awarded annually to states with the most improved error rates and the lowest error rates. Second, it serves as the improper payment rate for SNAP. States use the error rates and quality control data to identify the root causes of payment errors and implement corrective actions to better detect and prevent improper payments in subsequent years without compromising program access for beneficiaries and recipients entitled to payment. An additional purpose of quality control is to correct individual determinations that previously had been made incorrectly by the state and discovered during quality control, both with respect to eligibility and amount of benefits.

#### Receipt of Julie Osnes Consulting Services

4. Because of its payment error rate of 7.38, among the ten highest states, for FY 2008, WDHS was among the states facing sanctions by USDA unless it was able to reduce its error rate in FY 2009.

5. In order to reduce its SNAP error rate and avoid being sanctioned by USDA, WDHS entered into a "management letter" with Public Consulting Group

(PCG), an entity with a contractual agreement to provide consulting services, through which Julie Osnes Consulting, LLC performed its work for WDHS. Other than providing the contractual vehicle, PCG had no day-to-day role with respect to SNAP quality control; Julie Osnes Consulting personnel worked directly with and for WDHS quality control personnel.

6. The "Management Letter" between WDHS and PCG, which provided for the services of Julie Osnes Consulting, explicitly set forth that the purpose of the engagement was to "improve the [SNAP] positive error rate to avoid a second year of outlier status" and that one strategy was to "fully train" WDHS personnel in a "new culture and role which is to report the highest accuracy possible."

7. Although the SNAP error rate measures the rate at which SNAP *eligibility* decisions are made correctly and accurately, Julie Osnes Consulting's efforts focused on changing the approach taken and work done by WDHS quality control workers.

8. For work performed from January 1, 2009 through January 31, 2010, WDHS compensated Public Consulting Group under a contingency arrangement by which PCG, and Julie Osnes Consulting as subcontractor, would not receive any payment for its services unless WDHS was successful in winning a performance bonus for FY 2009 for its anticipated improvement in SNAP error performance, at which point Julie Osnes Consulting would receive 15 percent of any bonus received by WDHS.

9. In FY 2009, WDHS received \$2,861,791 in performance bonuses for its improved SNAP error rate, and paid Public Consulting Group \$429,268 of that amount for services rendered by Julie Osnes Consulting. For calendar years 2010 through 2012,

WDHS and PCG agreed to fixed-fee arrangements in which WDHS paid PCG, \$100,004 for each year in which Julie Osnes Consulting provided services.

#### Julie Osnes Consulting Method

10. Julie Osnes Consulting engaged in several activities which resulted in changes to WDHS's SNAP QC practices. Upon contracting to provide services to WDHS, Julie Osnes Consulting immediately began reviewing WDHS's error findings for FY 2009 and identifying what it called "opportunities" to reduce or eliminate the errors by changing the QC findings or finding ways to "drop" the cases from the review. In FY 2008, WDHS's SNAP QC error rate was 7.38 percent; in FY 2009, the first year in which WDHS began using the Julie Osnes Consulting method, WDHS's final SNAP QC payment error rate was 1.1%.

11. In March 2009, Julie Osnes Consulting provided training to WDHS QC reviewers on this "new culture" and on the Julie Osnes Consulting methodology for improving payment accuracy rates. Julie Osnes Consulting explained that under the Julie Osnes Consulting methodology, the role of QC was to report "the lowest supportable error rate" and to never report an error unless and until "every opportunity to arrive at a correct case disposition has been explored."

12. Following the March 2009 training, Julie Osnes Consulting continued to review error cases identified by WDHS for the purpose of identifying "opportunities" to reduce or overturn the error, or to drop the case from the review. As WDHS QC received instructions from Julie Osnes Consulting, it revised its earlier findings accordingly, add to or remove information from the file as necessary support the new

finding, and submit the revised information to FNS.

13. The Julie Osnes Consulting methodology for reducing error rates, as implemented by WDHS, included the following improper QC practices: (a) finding ways to induce client responses to justify dropping error cases from the review, including discouraging client cooperation and pursuing unnecessary information from clients; (b) selectively applying requirements and policies to overturn and reduce errors; (c) asking leading questions of clients to obtain desired answers to eliminate error potential; (d) arbitrating any and all differences with FNS; (e) subjecting error cases to additional scrutiny and QC casework with the goal of overturning an error or dropping a case; and (f) omitting certain pieces of verification from certain cases in the documentation made available to FNS. Each of these practices was recommended by Julie Osnes Consulting for the purpose of decreasing the error rate that WDHS reported to FNS, which FNS used to determine state eligibility for performance bonuses or sanctions.

14. WDHS's use of Julie Osnes Consulting's outcome-driven methods injected bias into the case review process. Because these methods were applied to only cases within a Quality Control sample and such increased scrutiny was not given to all SNAP cases, WDHS's Julie Osnes Consulting-influenced QC case reviews violated the standards of FNS Handbook 310 and constituted bias in WDHS's Quality Control process.

15. Some WDHS QC reviewers indicated that they were documenting and memorializing the Julie Osnes Consulting instructions for later because they believed

that the Julie Osnes Consulting method lacked integrity and injected bias into the WDHS SNAP QC process, and that FNS would ultimately catch on to the Julie Osnes Consulting method.

#### USDA High Performance Bonuses

16. After its engaging PCG for the services of Julie Osnes Consulting and adoption of the Julie Osnes Consulting methods, WDHS sharply reduced its SNAP error rate. While using these methods, Wisconsin received SNAP QC performance bonuses for FY 2009, FY 2010, and FY 2011. As discussed above, 15 percent of the FY 2009 bonus was passed on to PCG pursuant to the agreement between Julie Osnes Consulting, PCG, and WDHS. The remainder of the FY 2009 bonus and the FY 2010 and FY 2011 bonuses were reinvested into Wisconsin's SNAP program. In particular, WDHS updated and replaced outdated equipment, made necessary changes and improvements to the eligibility system, and used bonus funds to cover other SNAP activities that otherwise could have been jeopardized by budget shortfalls.

#### FNS Audit and Corrective Action

17. FNS conducted an on-site review of WDHS's QC review process in May 2016. FNS's review concluded that WDHS's QC processes and procedures "showed deficiencies in the integrity of Wisconsin's QC system." Specifically, FNS concluded that Wisconsin "introduced bias into its QC review process" by not following FNS requirements in its review of sample cases. FNS also concluded that recommendations from Julie Osnes Consulting "contributed to non-compliance with required FNS QC case record documentation."

18. Both before and since the FNS audit, WDHS has taken steps to eliminate the bias in its SNAP QC process introduced by Julie Osnes Consulting and use of the Julie Osnes Consulting-instituted case review methods, which occurred under prior WDHS leadership. WDHS has held remedial trainings focused on proper, FNS 310-compliant case review procedures attended by all QC staff. At these meetings, current WDHS QC leadership explicitly disavowed the Julie Osnes Consulting review methods and reiterated WDHS's renewed commitment to compliance with the FNS 310.

19. WDHS has cooperated with the United States Department of Justice ("DOJ") and the United States Department of Agriculture Office of Inspector General in their joint investigation into WDHS's QC process and retention of PCG to furnish Julie Osnes Consulting's services.