

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (the “Agreement”) is entered into between the State of Colorado (“the State”) and Essilor International, Essilor of America, Inc., Essilor Laboratories of America, Inc., and Essilor Instruments USA (collectively, “Essilor”), collectively, “the Parties.”

II. PREAMBLE

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

A. At all relevant times, Essilor International was an international company that, through its various affiliates, designed, manufactured, marketed, and distributed eye care equipment and products, including optical lenses, and provided various eye care services. Essilor of America, Inc. and Essilor Laboratories of America, Inc. were wholly owned subsidiaries of Essilor International that, among other things, manufactured and distributed optical lenses to independent eye care providers (“Providers”) throughout the United States. Essilor Instruments USA was an affiliate of Essilor International that, among other things, manufactured and distributed edging and finishing equipment, as well as other optical instruments, for in-store retail use by Providers. Optometrists and ophthalmologists provide prescriptions to patients, including those enrolled in Medicaid, which can be used to purchase optical lenses. In most cases, opticians such as Providers subsequently advise those patients on frames and certain types of lenses and lens coatings, as well as help fit the eyeglasses properly. Providers submit claims for those services to commercial and government payors.

B. The following *qui tam* actions have been filed against Essilor pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), and the corresponding provisions of analogous or other statutes of the states:

- *United States ex rel. Laura Thompson & Lisa Brez v. Essilor Int'l*, No. 3:15-CV-2853-C (N.D. Tex.) Under Seal.
- *United States ex rel. Christie Rudolph v. Essilor Labs. of Am., Inc.*, No.16-CV-0537 (WB) (E.D. Pa.) Under Seal.

These *qui tam* actions will be referred to collectively as the “Civil Actions.”

C. Essilor has entered into a separate civil settlement agreement (the “Federal Settlement Agreement”) with the “United States of America” (the “United States”) as that term is defined in the Federal Settlement Agreement.

D. The State contends that Essilor caused claims for payment to be submitted to the State’s Medicaid Program (42 U.S.C. Chapter 7 Subchapter XIX), including “managed care entities” as defined by 42 U.S.C. § 1396u-2.

E. The State contends that it has certain civil and administrative causes of action against Essilor for engaging in the following alleged conduct from January 1, 2011 through December 31, 2016 (the “Covered Conduct”):

- (a) The State contends that Essilor, through its Strategic Alliance, Practice Builder Loyalty, Practice Builder Elite, and Growth Financing programs (collectively, “Threshold Programs”), knowingly and willfully offered or paid unlawful remuneration to Providers to induce Providers to order and purchase Essilor products or services in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b and analogous state statutes.
- (b) The State further contends that Essilor knowingly caused Providers to submit false and/or fraudulent claims to the State’s Medicaid Program for Essilor products or services that were tainted by kickbacks that Essilor had offered or paid to Providers enrolled in Threshold Programs.

F. This Agreement is neither an admission of facts or liability by Essilor nor a concession by the State that its allegations are not well founded. Essilor denies the allegations in the Civil Actions and the State's allegations in Paragraphs D and E above.

G. The Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Pursuant to the Federal Settlement Agreement, Essilor has agreed to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (b) and subject to the non-participating state deduction provision of sub-paragraph (c) below), collectively, the sum of \$22,000,000.00 plus accrued interest (the "Total Settlement Amount"), which includes (i) a payment to the United States of the sum of \$16,433,345.01 plus interest (the "Federal Settlement Amount") and (ii) a payment to the Medicaid Participating States of the sum of \$5,556,654.99 plus accrued interest on that amount of 0.875% per annum commencing from June 25, 2020, and continuing to and including the day payment is made under this Agreement (the "Medicaid State Settlement Amount"). The Medicaid State Settlement Amount shall constitute a debt immediately due and owing to the Medicaid Participating States on the "effective date" of the Federal Settlement Agreement, as defined therein and subject to the terms of this Agreement. The debt shall forever be discharged by payments to the Medicaid Participating States under the following terms and conditions:

(a) The total Medicaid recovery for the Covered Conduct is \$12,500,000.00 consisting of \$5,566,654.99 for the states pursuant to this Agreement and \$6,933,345.01 for the

United States pursuant to the Federal Settlement Agreement. Essilor shall pay to the Medicaid Participating States the Medicaid State Settlement Amount, subject to the non-participating state deduction provision of sub-paragraph (c) below (the “Medicaid Participating State Settlement Amount”), no later than ten (10) business days after the expiration of the 60-day opt-in period for Medicaid Participating States described in sub-paragraph (b) below. The Medicaid Participating State Settlement Amount shall be paid and immediately deposited by electronic funds transfer to the New York State Attorney General’s National Global Settlement Account pursuant to written instructions from the state negotiating team (the “State Team”), which written instructions shall be delivered to counsel for Essilor. This electronic funds transfer shall constitute tender and negotiation of the State Amount as defined in Paragraph III. 1. (c) below.

(b) Essilor shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Essilor and the State Team have agreed, or in a form otherwise agreed to by Essilor and an individual State. The State shall constitute a Medicaid Participating State provided this Agreement is fully executed by the State and delivered to Essilor’s attorneys within 60 days of receiving this Agreement. Essilor’s offer to resolve this matter with the State shall become null and void absent written agreement between counsel for Essilor and the State Team to extend the 60-day period.

(c) The total portion of the amount paid by Essilor in settlement for the Covered Conduct for the State is \$1,096,985.36, consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$647,865.84 plus applicable interest (the “State Amount”), of which \$323,932.92 is restitution. If the State does not execute this Agreement within 60 days of receiving this Agreement, the State Amount

shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Essilor absent written agreement between counsel for Essilor and the State Team to extend the time period for executing this Agreement.

2. Contingent upon receipt of the State Amount, the State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Essilor in State or Federal Courts for the Covered Conduct, including any supplemental state law claims asserted in the Civil Actions. Contingent upon receipt of the State Amount, the State, if served with the Civil Actions and otherwise liable to pay a relator's share, agrees to pay the Relator(s), the amount of \$111,756.86 plus applicable interest. This amount is to be paid through the State Team and has been addressed via side letters with the Relators in the Civil Actions.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Essilor set forth in this Agreement, and conditioned upon tender and negotiation of the State Amount, the State agrees to release Essilor, together with any current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns of any of them (collectively, the "Essilor Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State's Medicaid Program as a result of the Covered Conduct.

4. Notwithstanding the releases given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the State are specifically reserved and are not released:

- (a) any criminal, civil, or administrative liability arising under state revenue codes;

(b) any criminal liability;

(c) any civil or administrative liability that any person or entity, including the Essilor Released Entities, 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 3 above, including, but not limited to, any and all of the following claims: (i) claims involving unlawful or illegal conduct based on State or federal antitrust violations; and (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

(d) any liability to the State for any conduct other than the Covered Conduct;

(e) any liability based upon obligations created by this Agreement;

(f) except as explicitly stated in this Agreement, any administrative liability or right, including exclusion from the State's Medicaid Program;

(g) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services, including quality of goods and services;

(h) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(i) any liability for failure to deliver goods or services due; or

(j) any liability of individuals.

5. Essilor waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the U.S. Constitution or the Excessive Fines Clause of the Eighth Amendment of the U.S.

Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

6. In consideration of the obligations of the State set forth in this Agreement, the Essilor Released Entities waive and discharge the State and any of its agencies, departments, and personnel including, but not limited to, officials, employees, and agents, whether current or former in their official and individual capacities from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Essilor Released Entities have against the State and any of its agencies, departments, and personnel as previously referenced arising from the State's investigation and prosecution of the Covered Conduct.

7. The amount that Essilor must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of any claims for payment now being withheld from payment by the State's Medicaid Program, or any other state program payor, for the Covered Conduct; and Essilor agrees not to resubmit to the State's Medicaid Program or any other state program payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees to withdraw the appeal of, or not to appeal or cause the appeal of, any such denials of claims.

8. Essilor shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

9. Essilor expressly warrants that it has reviewed its financial condition and that it is currently solvent, meaning that a fair valuation of its property (exclusive of exempt property) exceeds the sum of its debts.

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

11. Essilor agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement. Upon reasonable notice of such an investigation, Essilor shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, 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 and of Essilor. Upon request, Essilor agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, 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, as well as complete and unredacted copies of any other non-privileged documents in its possession, custody, or control relating to the Covered Conduct. Essilor shall be responsible for all costs it may incur in complying with this paragraph.

12. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. Except to the extent provided for in Paragraphs 3 and 6, above, or as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and the Parties do not release any liability as to any other person or entity.

14. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

15. In addition to all other payments and responsibilities under this Agreement, Essilor agrees to pay the State Team's reasonable expenses and fees, including travel costs, consultant expenses, and administrative fees. Essilor will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

16. This Agreement is governed by the laws of the State and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

17. The undersigned Essilor signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

18. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute acceptable binding signatures for purposes of this Agreement, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

19. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.


20. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

22. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by the Parties to this Agreement and shall not, therefore, be construed against any of the Parties for that reason. The recitals in Section I (Parties) and Section II (Preamble) are agreed to by the Parties. Essilor, however, denies the State's allegations in Paragraphs D and E of those recitals, as well as the allegations in the Civil Actions. The headings of this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents or meaning of this Agreement.

STATE OF COLORADO

PHIL WEISER, ATTORNEY GENERAL
STATE OF COLORADO


By:  _____
Digitally signed by George
Coddling
Date: 2022.06.07 06:08:43
-06'00'

Dated: _____

Robert Booth
Assistant Deputy Attorney General
Director, Medicaid Fraud Control Unit

FOR THE STATE OF COLORADO MEDICAID PROGRAM:

COLORADO DEPARTMENT OF HEALTH
CARE POLICY & FINANCING

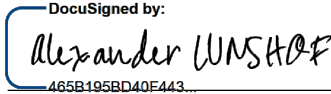
By:  _____

Dated: 6/10/2022 _____

Kim Bimestefer
Executive Director


ESSILOR

DATED: 7/25/2022

BY: 
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Essilor International

DATED: 7/21/2022

BY: 
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Essilor of America, Inc.

DATED: 7/21/2022

BY: 
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Essilor Laboratories of America, Inc.

DATED: 7/25/2022

BY: 
3C068870B9F6445...

Essilor Instruments USA

DATED: 7/26/2022

BY: 

Sean Cenawood
Dentons US LLP
Counsel for Essilor International, Essilor of America, Inc.,
Essilor Laboratories of America, Inc., and Essilor
Instruments USA