

**SETTLEMENT AGREEMENT WITH
FULL AND MUTUAL GENERAL WAIVER AND RELEASES**

This SETTLEMENT AGREEMENT WITH FULL AND MUTUAL GENERAL WAIVER AND RELEASES ("Agreement") is entered into by DANILO BENEDIT ("BENEDIT") and the CITY OF CORAL GABLES. The CITY OF CORAL GABLES is defined to include any and all related entities and subdivisions, as well as all respective former and current commissioners, city managers, city clerks, directors, administrators, agents, department heads, supervisors, employees, attorneys, representatives, insurers and officials (all in their official and individual capacities), as well as their heirs, executors, administrators, predecessors, successors, insurers, assigns, and all other persons, partnerships, firms or corporations, and their insurers who are related to the CITY OF CORAL GABLES, and all will be collectively referred to in this Agreement as the "CITY".

WHEREAS, BENEDIT is employed by the CITY as a Procurement Supervisor;

WHEREAS, on December 30, 2008, BENEDIT filed a lawsuit against the CITY in the United States District Court, Southern District of Florida, styled DANILO BENEDIT v. CITY OF CORAL GABLES, Case No. 08-23558-Seitz/O'Sullivan ("Case No. 08-23558"), alleging that the CITY violated the First Amendment to the United States Constitution and Florida's Public Sector Whistle-blower Act;

WHEREAS, the CITY denies the allegations made by BENEDIT in Case No. 08-23558; and,

WHEREAS, the parties prefer to avoid the uncertainties and expense of further litigation and, instead, desire to set forth in this Agreement, without establishing precedent, the terms and conditions of the settlement of BENEDIT's claims, including the release of any and all claims

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that he has or could possibly have against the CITY, in exchange for the consideration described herein.

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, receipt of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Contingent Upon Approval by City Commission on Tuesday March 23, 2010.

This Agreement is contingent upon approval of the City Commission on Tuesday, March 23, 2010. Should the City Commission not approve the Agreement or should it not go before the Commission on March 23, 2010, this Agreement will be null and void.

2. Execution of Joint Stipulation for Dismissal with Prejudice.

Should BENEDIT fail or refuse to execute this Agreement or revoke this Agreement for any reason, this Agreement shall be deemed invalid and unenforceable in its entirety, and the CITY shall be relieved of all obligations imposed by this Agreement. BENEDIT will authorize his attorney to execute on his behalf the Joint Stipulation for Dismissal With Prejudice ("Joint Stipulation") that is attached to this Agreement as attachment 1, thereby agreeing to dismiss Case No. 08-23558 with prejudice (each party to bear its own costs and fees except as delineated in this Agreement). Upon the expiration of the revocation period set forth in section 12.c. of this Agreement and approval by the City Commission on March 23, 2010, BENEDIT will direct his attorney to return the properly-executed Agreement, and the original properly-executed Joint Stipulation to counsel for the CITY, Denise M. Heekin, at the law firm of BRYANT MILLER OLIVE, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 1480, Miami, Florida 33131. Counsel for the CITY shall execute and file the Joint Stipulation upon receipt of the same.

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3. Consideration.

In consideration for BENEDIT's agreement to dismiss Case No., to resign from his employment with the City, to provide a full waiver and release, to enter into a confidentiality agreement, in addition to fulfilling the other promises set forth herein, the CITY agrees to pay BENEDIT the sum of One Hundred Fifty Thousand Dollars (\$150,000.00), which BENEDIT accepts in settlement of all claims. This amount represents payment of the following. The sum of One Hundred Twelve Thousand Dollars (\$112,000.00) to BENEDIT in full settlement of any and all claims that he brought or could have brought. Of this amount, Fifty Thousand (\$50,000.00) Dollars is designated for coverage of medical and health costs associated with Case No. 08-23558 and Sixty-Two Thousand (\$62,000.00) Dollars is designated as other compensatory damages. The sum of Thirty Eight Thousand Dollars (\$38,000.00) is for attorney's fees and costs incurred on behalf of BENEDIT in connection with Case No. 08-23558. The amount will be paid in a check made payable to DANILO BENEDIT and the trust account of Catherine M. Rodriguez, P.A., on the later of March 24, 2010, or dismissal by the Court.

BENEDIT agrees that the consideration being provided by the CITY in this Agreement constitutes adequate and ample consideration for the rights and claims he is waiving under this Agreement and for the obligation imposed upon him by virtue of this Agreement. BENEDIT further agrees and understands that the consideration being provided by this Agreement is consideration to which he is not otherwise entitled and which he would not receive but for this Agreement.

4. No Lawsuits or Claims.

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BENEDIT represents and agrees that he will not hereafter pursue, initiate, or cause to be instituted against the CITY or any party released herein, any dispute that is released herein. BENEDIT further represents that he does not currently have pending before any court or before any federal, state or local agency any dispute of any kind against the CITY other than Case No. 08-23558. If it is determined that BENEDIT has any other lawsuit, charge of discrimination, or other claim pending against the CITY, BENEDIT agrees to dismiss any such claims, with prejudice, immediately upon determining that such charge or claim is pending.

5. General Waiver and Releases of All Claims.

In exchange for the consideration described in this Agreement BENEDIT irrevocably, knowingly, and voluntarily releases, waives, and forever discharges any and all claims, demands, actions, or causes of action, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which he has or may have against the CITY from the beginning of the world until the effective date of this Agreement. The disputes released by BENEDIT include, but are not limited to, any and all disputes against the CITY concerning his employment and separation from employment with the CITY.

The disputes released by BENEDIT include those known or unknown, actual or contingent, in law, in equity, or otherwise and whether based in tort, contract, statute, or any other basis. This release includes all disputes for which BENEDIT could seek equitable relief, and actual, compensatory, consequential, liquidated, punitive, special, multiple or other damages, expenses (including attorneys' fees and costs), and all other reimbursements or charges of any kind. The disputes released by BENEDIT include, but are not limited to, any claim(s) under:

- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;

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- The Florida Civil Rights Act of 1992;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Constitutions of the United States and the State of Florida;
- The Employee Retirement Income Security Act of 1974;
- The Florida Health Insurance Coverage Continuation Act.
- The Florida Wage Discrimination Law;
- Florida Wage and Hour laws;
- Any Florida or federal whistleblower laws;
- The Internal Revenue Code;
- The Rehabilitation Act;
- The Consolidated Omnibus Budget Reconciliation Act;
- The Immigration Reform and Control Act of 1986;
- The Americans with Disabilities Act of 1990;
- The Age Discrimination in Employment Act, including the Older Workers Benefit Protection Act;
- The Fair Labor Standards Act;
- The Equal Pay Act of 1963;
- The Occupational Safety and Health Act;
- The Family and Medical Leave Act of 1993;
- The National Labor Relations Act; or
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance.

The disputes released by BENEDIT also include any and all disputes he has or believes himself to have against the CITY in contract or at common law, including, but not limited to, breach of oral, written and/or implied contract, an implied covenant of good faith and fair dealing, wrongful discharge under any theory, including for lack of good cause, in violation of public policy, and constructive discharge, intentional and negligent infliction of emotional distress, any tort action, negligent retention and supervision, assault, battery, negligence, misrepresentation or fraud of any kind, duress, unfair dealing, breach of fiduciary or other duty, invasion of privacy, defamation, false imprisonment, and interference with contract and/or prospective economic advantage.

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The reference herein to specific statutory, contract and common law claims is in no way intended to limit the disputes released by BENEDIT. BENEDIT intends that the disputes that he releases be construed as broadly as possible to cover any and all disputes he may have or believe himself to have against the CITY. In that regard, BENEDIT further acknowledges that he may later discover facts in addition to or different from those which he now knows or believes to be true. BENEDIT agrees that any such difference in the facts shall not affect this Agreement; that he assumes the risk of any such difference in the facts; and that he further agrees that this Agreement shall remain in full force and effect and not be subject to rescission by reason of any such difference in the facts.

BENEDIT also agrees and acknowledges that this Agreement is also entered into pursuant to Section 440.20(11)(c)(d) and (e), Florida Statutes, and is intended to be a complete and final settlement of any and all workers' compensation benefits under Chapter 440, Florida Statutes, including, but not limited to, future medical benefits. BENEDIT also stipulates that all accidents, injuries, repetitive traumas, exposures, and occupational diseases known to have occurred or been sustained due to employment by the CITY have been revealed. BENEDIT agrees that this Agreement includes all accidents, occupational diseases and injuries sustained while employed by BENEDIT, whether reported or not. It is BENEDIT's intention to fully, finally and forever resolve and release any and all disputes that he may have or believe himself to have against the CITY with respect to any alleged acts occurring before the effective date of this Agreement, whether those disputes presently are known or unknown, suspected or unsuspected.

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BENEDIT understands that nothing in this Agreement prohibits him from filing a charge with or participating in any investigation or proceeding before any federal, state or local governmental agency such as the Equal Employment Opportunity Commission and does not prohibit him from challenging the validity of the waiver and release set forth herein. However, BENEDIT agrees that with respect to the claims he is waiving, he is waiving not only his right to recover money or other relief in any action that he might institute but also that he is waiving his right to recover money or other relief in any action that might be brought on his behalf by any other person or entity including, but not limited to, the State of Florida, the United States Equal Employment Opportunity Commission, the Florida Commission on Human Relations, or any other (U.S. or foreign) federal, state, or local agency or department. BENEDIT further represents that he has not heretofore assigned or transferred, or purported to have assigned or transferred, to any entity or person any dispute released herein.

6. Resignation of Employment and No Future Employment.

BENEDIT agrees that he will sign and submit the irrevocable letter of resignation attached hereto as attachment 2. BENEDIT further agrees that he will never seek employment or reinstatement of her employment with the CITY. BENEDIT also agrees that should he breach this provision of the Agreement in that he seeks reemployment or reinstatement and, thereafter, files any type of administrative or legal action, that such administrative or legal action shall be immediately dismissed, that the CITY shall be entitled to an injunction barring such action, and that BENEDIT shall be fully responsible for any attorneys' fees and costs expended by the CITY in seeking such injunction and defending against such administrative or legal action.

7. No Admission of Liability or Wrongdoing.

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The parties to this Agreement agree that nothing contained in this Agreement or otherwise shall constitute or be construed as an admission of any alleged liability or wrongdoing by the CITY. Indeed, the CITY denies that it engaged in any wrongdoing of any kind with respect to any other party.

8. Confidentiality, Breach of Confidentiality and Response to Media.

BENEDIT understands and agrees that this Agreement is a confidential document. Accordingly, BENEDIT agrees that he will not disclose or discuss this Agreement, the circumstances relating thereto, or any of the claims or allegations giving rise to this Agreement, with any persons except his attorneys, accountants, or spouse or to comply with the requirements of the law or court order. Moreover, if BENEDIT discusses this Agreement with his attorneys, accountants, or spouse, it shall be his duty to direct them not to discuss the terms of this Agreement with any other person. BENEDIT shall be fully and completely responsible for any breach of this confidentiality provision, whether it be his own breach or a breach by his attorneys, accountant or spouse.

BENEDIT understands and agrees that under the Public Records Law, the CITY is required to, and shall upon request by a third party, disclose the terms of this Agreement, and the CITY shall comply with all federal, state and local laws requiring disclosure of public records.

All media inquiries regarding this Agreement shall be directed to the City Attorney's office. If the City Attorney's office is asked about the resolution of BENEDIT's lawsuit or employment, the City Attorney's office is authorized only to say, "The parties resolved the matter to their mutual satisfaction." If BENEDIT is asked about the resolution of BENEDIT's lawsuit

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or employment, he will only say, "I have no comment. Any questions should be directed to the City Attorney."

9. Non-Disparagement.

BENEDIT agrees that he will not take any action which might embarrass, harass or adversely affect the CITY or which might, in any way, whether directly or indirectly, work to the detriment of the CITY. In particular and by way of illustration and not limitation, BENEDIT agrees that he will not contact members of the press or media, any employee or former employee of the CITY, or any other entity that has a business relationship with the CITY in order to disparage the good reputation or business practices of the CITY.

The CITY, defined for purposes of this paragraph as the City Commission, City Manager, and City Attorney, agrees that it will not take any action which might embarrass, harass or adversely affect BENEDIT or which might, in any way, whether directly or indirectly, work to the detriment of BENEDIT. In particular and by way of illustration and not limitation, the CITY agrees that it will not contact members of the press or media or any entity that has a business relationship with BENEDIT in order to disparage his reputation or business practices. The CITY will provide a neutral employment reference for BENEDIT.

10. Indemnity.

BENEDIT acknowledges that all costs and/or attorneys' fees liens, workers' compensation liens, and all medical liens and bills for medical, hospital, ambulance and/or nursing care, treatment, diagnosis, or examination of BENEDIT arising out of or related to the claims asserted in, or that could have been asserted in connection with Case No. 08-23558 have or will be paid in full by BENEDIT.

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BENEDIT agrees to this indemnity provision for the purpose of inducing the CITY to settle Case No. 08-23558 and in consideration for the funds paid as set forth in this Agreement. BENEDIT agrees to indemnify and hold the CITY harmless of and from any and all bills, sums, amounts, debts, liens, demands, claims, promises, damages, judgments, and executions in law or in equity, for attorneys' fees and/or costs, medical, hospital, ambulance and/or nursing care, treatment, diagnosis or examination arising out of or related to Case No. 08-23558 or any other allegation that was made or could have been made by BENEDIT.

11. Tax Consequences of Settlement.

BENEDIT understands and agrees that should the IRS, or any other taxing authority or other federal, state, or local agency assert, argue, or determine that any money received or paid pursuant to this Agreement that was not subject to withholding and/or deductions, is taxable wages, income, or benefits of any kind, BENEDIT will be solely and individually responsible for the payment of any and all taxes, contributions, withholdings, or deductions. BENEDIT's responsibility for such taxes, withholding, contribution and/or deduction includes, but not limited to, the amount of the tax, withholding, contribution and/or deduction as well as any and all penalties, interest, fees, fines, attorneys' fees and costs, related to the amount of taxes, withholding, contribution and/or deduction that should have been paid by BENEDIT. BENEDIT further agrees that he will indemnify, reimburse, and hold the CITY harmless for any and all taxes, contributions, withholdings, deductions, fees, attorneys' fees and costs, interest and/or penalties related to the amount of taxes, withholding, contribution and/or deduction attributable to what should have been paid by BENEDIT.

12. Encouragement to Consult Attorney and Time for Consideration.

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a. **Representation by Legal Counsel.** The CITY encouraged BENEDIT to consult an attorney regarding the terms of this Agreement before signing the Agreement, and BENEDIT acknowledges that he did, in fact, consult with an attorney regarding the terms of this Agreement. BENEDIT acknowledges that he had his attorney review this Agreement and explain this Agreement to her. **BENEDIT ACKNOWLEDGES THAT HE FULLY UNDERSTANDS THE LEGAL EFFECT OF THIS AGREEMENT, HIS RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT, AND THAT HE INTENDS TO BE LEGALLY BOUND BY THIS AGREEMENT.**

b. **Time to Consider Signing Agreement.** BENEDIT acknowledges that he has been given a reasonable period of time of not less than twenty-one (21) days within which to decide whether to sign this Agreement. BENEDIT understands and agrees that he can use all or any part of this period to decide whether to sign this Agreement. BENEDIT agrees that any changes to this Agreement from that originally presented to BENEDIT will not restart the twenty-one (21) day consideration period.

c. **Seven (7) Day Period to Revoke.** BENEDIT understands that he may revoke this Agreement within seven (7) calendar days after he signs the Agreement.¹ If BENEDIT revokes the Agreement, the Agreement will be deemed unenforceable, will be null and void, and the CITY shall be relieved of all obligations stated in this Agreement. To be an effective revocation, any revocation must be in writing, executed by BENEDIT and delivered to the CITY's counsel, Denise M. Heekin, Esquire, at the law firm of BRANT MILLER OLIVE,

¹ For purposes of computing this seven (7) day period, the date BENEDIT signs the Agreement should not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period of time prescribed runs until the end of the next day which is not one of the aforementioned days. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.


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One Biscayne Tower, 2 South Biscayne Boulevard, Suite 1480, Miami, Florida 33131, on or before the seventh calendar day by or before 5:00 p.m. (Eastern Time). The revocation must expressly state "I hereby revoke the Agreement."

d. **Enforceability.** BENEDIT acknowledges that this Agreement will become enforceable as to BENEDIT when the seven (7) day revocation period has expired. The Agreement will become enforceable as to the CITY once it is approved by the City Commission on March 23, 2010.

13. **Governing Law and Interpretation.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and where applicable, federal laws. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly construed for or against either party.

14. **Severability.**

Should any court of competent jurisdiction declare illegal or unenforceable any provision of this Agreement (which provision cannot be modified to be enforceable), with the exception of section 5. General Waiver and Releases of All Claims, such provision shall immediately become null and void leaving the remainder of this Agreement in full force and effect. Should section 5. General Waiver and Releases of All Claims be declared illegal or unenforceable, this entire Agreement shall become null and void, BENEDIT will be required to immediately return to the CITY all consideration provided to him or on his behalf by this Agreement, and BENEDIT may reinstate any and all claims that he has or may have that he otherwise released in this Agreement.


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The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly construed for or against either party.

15. Entire Agreement; Amendment; Signatures.

~~This Agreement and its attachments set forth the entire agreement between the parties and~~
~~supersede any and all prior agreements or understandings between the parties. This Agreement~~
~~may not be amended except by a written agreement signed by the parties or signed by their~~
~~respective administrators, trustees, personal representatives, or successors.~~

16. Headings.

Section headings are used in this Agreement for ease of reference only and shall not affect the meaning of any provision of this Agreement.

17. Disputes.

In the event that any party to this Agreement institutes legal proceedings for breach of the terms of this Agreement, it is stipulated and agreed that such a claim shall be heard and determined by the court, and not by a jury, in Miami-Dade County, Florida. **BENEDIT AGREES AND UNDERSTANDS THAT HE IS WAIVING THE RIGHT TO A JURY TRIAL, IF ONE EXISTS, AS TO A CLAIM OF BREACH OF THIS AGREEMENT.** Furthermore, in the event that it shall be necessary for any party to this Agreement to institute legal action to enforce any of the terms and conditions or provisions contained herein, or for any breach thereof, the prevailing party shall be entitled to costs and reasonable attorney's fees up through any appeals.

18. Entire Agreement.

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BENEDIT acknowledges that he has carefully read and understands this Agreement and agrees that the CITY has not made any representations other than those contained herein. BENEDIT also acknowledges that he enters into this Agreement voluntarily, without any pressure or coercion, and with full knowledge of its significance, and that this Agreement constitutes a **FULL AND ABSOLUTE SETTLEMENT AND BAR AS TO ANY AND ALL CLAIMS** he had, has, or may have against the CITY.

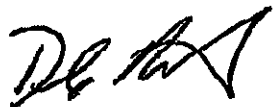
19. Acknowledgement.


THE PARTIES HAVE READ, UNDERSTOOD, AND FULLY CONSIDERED THIS AGREEMENT CONSISTING OF FOURTEEN (14) PAGES AND TWO (2) ATTACHMENTS AND ARE MUTUALLY DESIROUS OF ENTERING INTO SUCH AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN BENEDIT AND THE CITY. HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THEREBY THE BENEFITS SET FORTH ABOVE, BENEDIT FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO RELEASE, WAIVE, AND SETTLE ALL CLAIMS THAT HE HAS OR MIGHT NOW HAVE AGAINST THE CITY.

WHEREFORE, the parties, intending to be legally bound, execute this Agreement as of the dates set forth below.

DANILO BENEDIT

CITY OF CORAL GABLES, FLORIDA




BENEDIT

By: _____

CITY

Elizabeth M. Hernandez, Esquire
City Attorney, City of Coral Gables

Date: _____

Date: _____

Approved as to Form By:

Catherine M. Rodriguez, Esquire
Counsel for Plaintiff

Denise M. Heekin, Esquire
Counsel for Defendant

Date

Date



JOHNS EASTERN COMPANY, INC. Claim Adjusters &
Third Party Administrators
P.O. BOX 110239, Lakewood Ranch, FL 34211-0004
Tel. 841-807-3100 Fax 841-527-4040

RE: Our Client: City of Coral Gables
Claimant:
File:
Date of loss:

Dear Mr.:

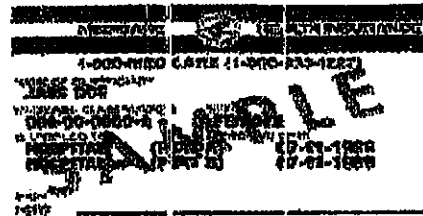
This letter is a directed inquiry about the Medicare status of the claimant named above. Section 111 of the Medicare, Medicaid, and Schip Extension Act of 2007 requires submission by or on behalf of Liability insurance (including Self-Insurance), No Fault Insurance and Workers Compensation Laws and Plans; of the information requested below. Sec 42 U.S.C. 1395y (b) (8). Please complete this form and return in the self addressed stamped envelope.

The Centers for Medicare & Medicaid Services (CMS) is the federal agency that oversees the Medicare program. Many Medicare beneficiaries have other insurance in addition to their Medicare benefits. Sometimes, Medicare is supposed to pay after the other insurance. However, if certain other insurance delays payment, Medicare may make a "conditional payment" so as not to inconvenience the beneficiary, and recover after the other insurance pays.

Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA), a new federal law that became effective January 1, 2009, requires that liability insurers (including self-insurers), no-fault insurers, and workers' compensation plans report specific information about Medicare beneficiaries who have other insurance coverage. This reporting is to assist CMS and other insurance plans to properly coordinate payment of benefits among plans so that your claims are paid promptly and correctly.

We are asking you to answer the questions below so that we may comply with this law.

Please review this picture of the Medicare card to determine if you have, or have ever had, a similar Medicare card.



03/12/10

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Section I

Are you presently, or have you ever been, enrolled in Medicare Part A or Part B?															Yes		<input checked="" type="checkbox"/> No	
If Yes, please complete the following and proceed to Section II.																		
For a time, if you have paid the name exactly as it appears on your SSN or Medicare card.															Variable			
Medicare Claim Number:																		
Date of Birth (Mo/Day/Year)																		
Social Security Number:																		
(If Medicare Claim Number is Unavailable)																		

Section II

Section II
I understand that the information requested is to assist the requesting insurance arrangement to accurately coordinate benefits with Medicare and to meet its mandatory reporting obligations under Medicare law.

DANIEL BENEDIT.

Claimant Name (Please Print)

Claim Number

Name of Person Completing This Form If Claimant is Unable (Please Print)

De ~~MS~~

Signature of Person Completing This Form

Date _____

3-15-2017

If you have completed Sections I and II above, stop here. If you are refusing to provide the information requested in Sections I and II, proceed to Section III.

Section III

Claimant Name (Please Print)

Claim Number

For the reason(s) listed below, I have not provided the information requested. I understand that if I am a Medicare beneficiary and I do not provide the requested information, I may be violating obligations as a beneficiary to assist Medicare in coordinating benefits to pay my claims correctly and promptly.

03/12/10

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Reason(s) for Refusal to Provide Requested Information:

Signature of Person Completing This Form

Date

Sincerely,

Rosemary Patterson,
Senior Adjuster