

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, and
STATE OF NEW YORK,
ex rel. LHCSA I LLC, LHCSA II LLC, AND
LHCSA III LLC,

Plaintiffs,

- against -

All American Homecare Agency, *et al.*,

Defendants.

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**STIPULATION AND ORDER
FILED UNDER SEAL**

Civil Action No.
17-CV-2938

(Glasser, J)
(Scanlon, M.J.)

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into among the State of New York (the "State"), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit ("MFCU"); All American Homecare Agency, Inc. ("All American"); and LHCSA I LLC, LHCSA II LLC, and LHCSA III LLC (collectively, "Relators") (hereinafter, all of the above are collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Defendant All American, a for-profit corporation organized under the laws of the State of New York, is a licensed home care services agency as defined in Article 36 of the New York Public Health Law Section 3206(13) ("LHCSA") with its principal place of business located at 2570 East 17th Street, Brooklyn, New York 11235.

B. LHCSAs provide home health aide and personal care aide services to elderly and infirm individuals, including Medical Assistance Program (“Medicaid”) recipients, who require assistance with activities of daily living such as cooking, cleaning, dressing, and bathing. LHCSAs provide these services through aides sent to recipients’ homes.

C. All American entered into contracts with Managed Long Term Care Plans as defined in Article 44 of the New York Public Health Law Section 4403-F (“MLTCPs”) to provide home health care services to Medicaid recipients in New York.

D. The New York Wage Parity Act, Public Health Law § 3614-c, established minimum wage and benefit requirements, effective March 1, 2012, for home care aides who render services to Medicaid recipients in New York City and effective March 1, 2013, for agencies located in Nassau, Suffolk or Westchester Counties (“the Wage Parity Act”).

E. Pursuant to the Wage Parity Act, home care aides who perform Medicaid-reimbursed work are to be compensated with an hourly base wage and a supplemental benefit, which is comprised of an additional wage component and a supplemental wage component (collectively, “Total Compensation”).

F. The Wage Parity Act applies equally to services provided by home care aides who work on episodes of care as direct employees of MLTCPs or as employees of LHCSAs. N.Y. Pub. Health Law § 3614-c(4).

G. The Wage Parity Act states that neither MLTCPs nor LHCSAs shall receive payments from government agencies for any episode of care furnished, in whole or in part, by any home care aide who is compensated at amounts less than the applicable minimum rate of Total Compensation. *See id.* at §§ 3614-c(2), (5).

H. During the period relevant to this Agreement, LHCSAs were also required to provide quarterly certifications to the MLTCPs with which they contracted to provide home care services, attesting to the LHCSA's compliance with the terms of the Wage Parity Act. *Id.* at § 3614-c(6). The MLTCPs in turn filed annual certifications with the New York State Department of Health ("DOH") verifying that all episodes of care provided or arranged for by the MLTCPs complied with the Wage Parity Act. *Id.* at § 3614-c(5).

I. On May 15, 2017, Relators filed a complaint under the *qui tam* provisions of the federal False Claims Act ("FCA"), 31, U.S.C. § 3730(b) and the New York False Claims Act ("NY FCA"), N.Y. State Fin. Law § 187 *et seq.*, captioned *United States of America and the State of New York ex rel. LHCSA I LLC, et al. v. All American Homecare Agency, et al.*, in the United States District Court for the Eastern District of New York (Civil Action No. 17-cv-2938) (Glasser, J.) (the "Civil Action"). Relators alleged, *inter alia*, that defendant All American violated the FCA and NY FCA by knowingly presenting or knowingly causing false claims to be presented to Medicaid by submitting claims to MLTCPs for home care services provided by aides who received less than the requisite Total Compensation as mandated by the Wage Parity Act.

J. The United States and the State will partially intervene in the Civil Action for the purpose of settlement, and based on the investigation of the Civil Action contend that All American caused the MLTCPs, with which All American contracted to provide home health care services, to submit false Medicaid claims to fiscal agents of the State of New York pursuant to Social Services Law and the Public Health Law of the State of New York during the period from January 1, 2014 through December 31, 2017 ("Claims Period"). These claims were relied upon by fiscal agents of the State to pay the MLTCPs, which, in turn, paid All American for services on dates occurring during the Claims Period.

K. As a result, the State contends that it has certain civil claims against All American arising from All American's conduct during the Claims Period (hereinafter referred to in this Recital K as the "Covered Conduct"):

- (1) All American did not pay its home care aides the requisite Total Compensation pursuant to the Wage Parity Act;
- (2) All American sought payment from Medicaid, and received payment thereon, through MLTCPs, for episodes of care performed by home care aides, whom All American did not properly compensate under the Wage Parity Act;
- (3) All American certified compliance with the Wage Parity Act to the MLTCPs with which it had contracted to provide care to Medicaid recipients; and
- (4) In reliance on these certifications, the MLTCPs submitted an annual certification to DOH that all services provided by or arranged for by the MLTCPs, were in full compliance with the Wage Parity Act.

L. During the Claims Period, All American's efforts to bring its Total Compensation into compliance with the Wage Parity Act were not successful, resulting in All American paying a portion of its home care aides who rendered care to Medicaid recipients the requisite Total Compensation owed, while underpaying others. In contemplation of a potential shortfall, in November 2017, All American engaged the services of an outside consulting firm to determine its Wage Parity Act liability to its home care aides. Thereafter, All American made a series of payments to former and current employees by way of checks or deposits into 401k accounts in satisfaction of its Wage Parity Act liability for the Claims Period.

M. All American admits, acknowledges, and accepts responsibility for the Covered Conduct.

N. Relators claim entitlement under N.Y. State Fin. Law §§ 190(6) and (7) to a share of the proceeds of this Settlement Agreement and to Relators' reasonable expenses and attorneys' fees and costs.

O. All American wishes to resolve its liability for the Covered Conduct, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. As payment to the United States and the State for the Covered Conduct, All American shall pay Four Million dollars (\$4,000,000.00) (the "Total Settlement Amount"). Of that amount, All American shall pay to the State Two Million Four Hundred Thousand dollars (\$2,400,000.00) ("State Settlement Amount"), no later than 14 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by MFCU.

2. Conditioned upon the State receiving the State Settlement Amount from All American and as soon as feasible after receipt, the State agrees to pay Relators eighteen percent (18%) of the State Settlement Amount, Four Hundred Thirty-Two Thousand dollars (\$432,000.00), by check, pursuant to written instructions provided by counsel for Relators.

3. All American shall pay Forty-Three Thousand dollars (\$43,000.00) to Relators for expenses, and attorney's fees and costs.

INTEGRITY PROVISIONS

4. All American agrees to self-report to MFCU through counsel for a period of two years, in the following manner (the "Integrity Obligations"):

- a. Beginning 30 days after the Effective Date of this Agreement, All American shall produce reports twice annually detailing how it has met

its Wage Parity Act obligations for the previous six months. MFCU shall provide the dates upon which these semi-annual reports are due in writing after execution of the Agreement.

b. Along with each semi-annual report, All American shall submit the following supporting documents:

- i. A statement of wage parity hours and expenses incurred for any benefits All American claims as compensation under the Wage Parity Act for the previous six months;
- ii. Payroll records reporting company totals for Wage Parity Act hours worked for the six months, wages paid for those hours, and, if All American chooses to satisfy any portion of its Wage Parity Act obligations by providing paid time off, any paid time off accrued by aides; and
- iii. Documents sufficient to verify amounts paid by All American for any benefits that All American claims as compensation under the Wage Parity Act, including but not limited to, health, transit and 401(k) benefits.

1. Examples of such verification documents include copies of cancelled checks, wire transfers, bank account statements and invoices.

c. In addition to the materials submitted in subparagraph b, All American shall submit to MFCU when it becomes due to the MLTCPs with which it contracts, a copy of the materials submitted to the MLTCPs on an

annual basis pursuant to N.Y. Pub. Health Law § 3614-c(6), as amended by section 1 of part OO of chapter 56 of the laws of 2020, to verify compliance with the terms of the Wage Parity Act, including:

- i. A written certificate, verified by oath, from All American which attests to All American's compliance with the Wage Parity Act;
 - ii. An annual compliance statement of wage parity hours and expenses on a form provided by the New York Department of Labor; and
 - iii. An independently audited financial statement verifying expenses referenced in the compliance statement.
- d. All American shall comply with the notice and records retention requirements set forth in N.Y. Labor Law §§ 195(1)(a), (3) and (4), as amended by Section 2 of part OO of chapter 56 of the laws of 2020, and shall make any such records available to MFCU upon request, including copies of notices to aides of their Wage Parity Act benefits, signed acknowledgements, and wage statements.
- e. Should All American elect to satisfy any portion of its Wage Parity Act obligation through the provision of paid time off to its home care aides, All American shall retain contemporaneous records of policies, accruals, usages and payments to such aides and shall provide them to MFCU upon request.

5. All American is expected to fully and timely comply with all of its obligations pursuant this Agreement. In the event that the State asserts, in writing, that All American is not in

compliance with any of its obligations under this Agreement, All American shall have seven (7) business days to demonstrate to the State that it is in compliance, or fourteen (14) business days to cure any non-compliance. To the extent All American thinks it needs additional time to investigate the alleged non-compliance, they shall notify the State of their request for additional time and present such time period. The State shall consider such request. In the event that All American fails to cure any such non-compliance, the State may, at MFCU's sole discretion, declare this Agreement void, retain all sums delivered to it prior to the date of non-compliance, and pursue all remedies existing prior to execution of this Agreement.

6. Subject to the obligations in Paragraphs 4 and 5 (Integrity Obligations) above and the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon All American's full payment of the State Settlement Amount to the State, the State releases All American from any civil monetary claim it has for the Covered Conduct under the NY FCA; N.Y. Exec. Law § 63(12); N.Y. Soc. Servs. Law § 145-b; the Wage Parity Act; or the common law theories of payment by mistake, unjust enrichment and fraud.

7. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon All American's full payment of the State Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release All American from any civil monetary claims the Relators have on behalf of the State for the Covered Conduct under the NY FCA.

8. Notwithstanding the releases given in Paragraphs 6 and 7 of this Agreement, or any other term of this Agreement, the following claims of the State are specifically reserved and not released:

- a. Any liability arising under New York tax codes;

- b. Any criminal liability;
- c. Any liability of individuals;
- d. Any liability for personal injury, patient abuse or neglect arising from the Covered Conduct;
- e. Any civil or administrative liability All American has or may have to any individual or entity, other than the State, under any statute, regulation or rule not expressly covered by the release in Paragraph 6 above, including but not limited to, any and all claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- f. Any liability that may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid program on a capitated basis, other than liability of All American to the State for the Covered Conduct;
- g. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- h. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct; and
- i. Any liability based upon obligations created by this Agreement.

9. Relators and their heirs, successors, attorneys, agents and assigns shall not object to the Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to N.Y. State Fin. Law § 190 (5)(b)(ii). Conditioned upon Relators' receipt of the payment described in Paragraph 2 above, Relators and their heirs, successors,

attorneys, agents and assigns fully and finally release, waive, and forever discharge the State, as well as its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action against All American or, with respect to All American, any claims arising under N.Y. State Fin. Law § 190, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action against All American.

10. Conditioned upon Relators' receipt of the payments described in Paragraphs 2 and 3 above, Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release All American, and its officers, agents, and employees, from any liability to Relators arising from the filing of the Civil Action, or under N.Y. Fin. Law § 190(6) for expenses or attorney's fees and costs.

11. All American waives and shall not assert any defenses All American 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.

12. All American fully and finally releases the State, and its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees and costs, and expenses of every kind and however denominated) that All American has asserted, could have asserted, or may assert in the future against the State or its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the State's investigation and prosecution thereof.

13. All American fully and finally releases Relators from any claims (including attorney's fees, costs and expenses of every kind and however denominated) that All American

has asserted, could have asserted, or may assert in the future against Relators, related to the Covered Conduct, the Civil Action, and the Relators' investigation and prosecution thereof.

14. 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 contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, or carrier) or state payor, related to the Covered Conduct; and All American agrees not to resubmit to any Medicare contractor or state payor any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials or claims, and agrees to withdraw any such pending appeals.

15. All American agrees, to the following:

a. **Unallowable Costs Defined:** 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. §§ 1395-1395lll-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of All American, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the State's audit and civil investigation of the matters covered by this Agreement;
- (3) All American's investigation, defense, and corrective actions undertaken in response to the State's and United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

- (4) the negotiation and performance of this Agreement;
 - (5) the payments All American makes to the State pursuant to this Agreement and any payments All American makes to Relators, including costs and attorney's fees; and
 - (6) the negotiation of, and obligations undertaken concerning self-reporting requirements pursuant to the Integrity Obligations are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP") (hereinafter referred to as "Unallowable Costs").
- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by All American, and All American shall not charge such Unallowable Costs directly or indirectly to any contracts with the State Medicaid Program or any MLTCP, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by All American or any of its subsidiaries or affiliates to the Medicaid Program.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: All American further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicaid fiscal intermediaries, carriers, and/or contractors, and Medicaid fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments

previously sought from the State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests, already submitted by All American 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. All American agrees that the State, at a minimum, shall be entitled to recoup from All American 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.

- d. Any payments due after the adjustments have been made shall be paid to the State. The State reserves its rights to disagree with any calculations submitted by All American or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on All American's or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.
- e. Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine All American's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

16. All American agrees to cooperate fully and truthfully with the State's investigations of individuals and entities not released in this Agreement. Upon reasonable notice, All American 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. All American further agrees to furnish to the State, 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.

17. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 18 (waiver for beneficiaries), below.

18. All American 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, health insurance benefit programs or other third party payors based upon the claims defined as the Covered Conduct.

19. Upon receipt of State Settlement Amount, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action as to All American pursuant to Rule 41(a)(1) as follows:

- a. The Notice of Dismissal shall be with prejudice as to the Relators' claims in the Civil Action as to the Covered Conduct and consistent with the terms and conditions of this Agreement.

b. The Notice of Dismissal shall be without prejudice to the State. Upon completion of the term of the Integrity Obligations, the State shall file a Notice of Dismissal of the Civil Action as to All American with prejudice.

20. Except as identified in Paragraph 3 each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation of and performance of this Agreement.

21. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

22. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of New York.

23. 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.

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

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

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

27. This Agreement is binding on All American's successors, transferees, heirs, and assigns.

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

29. All Parties consent to the State's disclosure of this Agreement, and information about this Agreement, to the public. All American agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis.

30. Any notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be emailed to the email address below, followed by postage prepaid mail to the address as follows:

IF TO THE ATTORNEY GENERAL and the STATE:

Chief, Civil Enforcement Division
Medicaid Fraud Control Unit
New York State Office of the Attorney General
28 Liberty Street, 13th Floor
New York, NY 10005
Telephone: (212) 517-5300
MFCUNotices@ag.ny.gov

IF TO ALL AMERICAN:

Albert Isakov
c/o Francis Serbaroli
Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, New York 10166
Telephone: (212) 801-2212
SerbaroliF@gtlaw.com

31. This Agreement is effective on the date of the last signatory to the Agreement ("Effective Date of this Agreement"). Electronic transmissions of signatures shall constitute acceptable, binding signatures for the purpose of this Agreement.

AGREED TO BY:

THE STATE OF NEW YORK

LETTIA JAMES
Attorney General of the State of New York

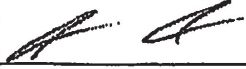
DATED: 7/26/21

BY: *Jill D. Brenner*
JILL D. BRENNER
HILLARY GRAY CHAPMAN
TING TING TAM
Special Assistant Attorneys General

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DEFENDANT ALL AMERICAN

DATED: 7/16/2021

BY: 

Albert Isakov, CEO
ALL AMERICAN HOMECARE AGENCY INC.

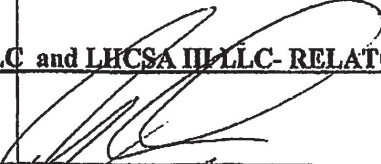
DATED: _____

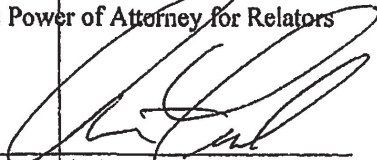
BY: 

Frank Serbaroli, Esq.
GREENBERG TRAURIG, LLP
Counsel for All American

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LHCSA I LLC, LHCSA II LLC and LHCSA III LLC- RELATORS

DATED: 7/16/21 BY: 
Andrea Fischer, Esq.
FISCHER LEGAL GROUP
As Power of Attorney for Relators

DATED: 7/16/21 BY: 
Andrea Fischer, Esq.
FISCHER LEGAL GROUP
Counsel for Relators

Dated: 3/9/2022, ~~2021~~
Brooklyn, New York

SO ORDERED:

/s/ I. Leo Glasser, U.S.D.J.
HON. I. LEO GLASSER
UNITED STATES DISTRICT JUDGE