

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA and the
STATE OF NEW YORK *ex rel.* STEPHANIE
MUNFORD,

Plaintiffs and Relator,

v.

MARANATHA HUMAN SERVICES, INC.
and HENRY ALFONSO COLEY,

Defendants.

THE STATE OF NEW YORK,

Plaintiff-Intervenor,

v.

MARANATHA HUMAN SERVICES, INC.
and HENRY ALFONSO COLEY,

Defendants.

18 Civ. 8892 (KMK)

**STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL**

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiff the State of New York (the “State”), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“MFCU”); the relator Stephanie Munford (“Relator”), by her authorized representatives; and defendant Maranatha Human Services, Inc. (“Maranatha” and together with the State and Relator, the “Parties”), by its authorized representatives;

WHEREAS, Maranatha is a New York not-for-profit corporation that provides services to individuals with developmental disabilities;

WHEREAS, Maranatha is chiefly government-funded, primarily through Medicaid;

WHEREAS, Henry Coley founded Maranatha in 1988 and served as its Chief Executive Officer until July 31, 2021;

WHEREAS, providers like Maranatha are required to submit a Consolidated Fiscal Report (“CFR”) each year to the State, reporting its costs and separating those costs that are reasonable and necessary for the provision of Medicaid services (“allowable costs”) from any other costs (“non-allowable costs”);

WHEREAS, for certain of Maranatha’s programs, including its largest program, the State sets provider-specific Medicaid reimbursement rates based in part on the costs reported in that provider’s CFRs;

WHEREAS, on or about September 28, 2018, Relator filed a complaint under the *qui tam* provisions of the New York False Claims Act (“NY FCA”), N.Y. State Fin. Law § 187 *et seq.*, as well as the federal False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, against Maranatha and Coley (the “Relator Complaint”);

WHEREAS, the State alleges that from 2010 through 2019 (the “Covered Period”), Coley and Maranatha violated the NY FCA by knowingly submitting CFRs falsely claiming as “allowable costs” millions of dollars Maranatha spent on expenses that were not reasonable and necessary for the provision of Medicaid services, but instead were used to enrich Coley, his family, and his friends and to support for-profit ventures owned or controlled by Coley. The State further alleges that, at Coley’s direction, Maranatha requested and received Medicaid funds to which it was not entitled based on the fraudulent inclusion of these expenses as allowable costs. The conduct described in this paragraph is the “Covered Conduct” for purposes of this Stipulation;

WHEREAS, the State filed a Notice of Election to Intervene in the above-referenced *qui tam* action on February 26, 2021;

WHEREAS, on April 18, 2022, the State filed a Complaint-in-Intervention in the above-referenced *qui tam* action (“State Complaint”), in which it is asserting claims against Maranatha and Coley under the NY FCA and common law for the Covered Conduct;

WHEREAS, Maranatha intends to enter into a separate settlement agreement with the United States (“the Federal Settlement”) to resolve claims asserted by the Government under the federal False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.* for the Covered Conduct, and has agreed to pay a total of \$340,000 to the Government pursuant to the Federal Settlement;

WHEREAS, on November 9, 2021, the State entered into a separate settlement agreement with Henry A. Coley to resolve claims under the NY FCA, N.Y. State Fin. Law § 187 *et seq.* for the Covered Conduct;

WHEREAS, Maranatha submitted an Affidavit of Financial Information and Authorizations sworn to on February 24, 2021 to the State, and whereas Maranatha submitted sworn financial disclosures and supporting documents to the United States, and supplemental supporting materials to the United States and the State in March, May and June 2022 (together, the “Federal and State Financial Disclosures”) whereby Maranatha affirmed under penalty of perjury that it lacks the assets and ability to make full financial restitution to the State for the losses to the Medicaid Program as a result of the Covered Conduct;

WHEREAS, Maranatha hereby swears and affirms that the information in the Federal and State Financial Disclosures is true and correct and Maranatha has not had any material increase in its financial net worth since the execution or submission of the Federal and State Financial Disclosures;

WHEREAS, the Parties agree that State has entered into this Stipulation in reliance upon the representations set forth in the Federal and State Financial Disclosures;

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted in the State Complaint against Maranatha, for the Covered Conduct;

NOW, THEREFORE, upon the Parties' agreement IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court's exercise of personal jurisdiction over each of them.
2. Maranatha admits, acknowledges and accepts responsibility for the following conduct (the "Admitted Conduct"):
 - a. Since 2010, each fiscal year Maranatha submitted Consolidated Fiscal Reports ("CFRs") to the State.
 - b. The State's Consolidated Fiscal Reporting and Claiming Manual requires entities such as Maranatha to report all of their costs each fiscal year, separating "allowable costs" from "non-allowable costs." The Manual defines an "allowable cost" as a cost "reasonable and/or necessary for providing [Medicaid-funded] services in both its nature and amount."
 - c. Maranatha knew of the requirement that Maranatha distinguish "allowable costs" from "non-allowable costs" in its CFRs.
 - d. Maranatha knew that the allowable costs Maranatha reports in its CFRs are used by the New York State Department of Health, in part, to determine Maranatha's reimbursement rates for the provision of Medicaid-funded services.

- e. In each CFR Maranatha submitted since 2010, Maranatha's CEO, Coley, certified that: (i) the "information furnished in this report . . . is in accordance with the instructions and is true and correct to the best of my knowledge"; and (ii) the statement attached to the CFR "fully and accurately represents all reportable income and expenditures made for services performed in accordance with the provision of the Mental Hygiene Law and approved budgets." In addition to these certifications, in the CFRs submitted since 2018, Coley certified that Maranatha had "reported and adjusted out all non-allowable expenses on the CFR core and claiming documents as required by [its] funding agency."
- f. Throughout the Covered Period, every year Maranatha submitted CFRs that reported as "allowable costs" amounts expended not for Maranatha's provision of Medicaid-funded services but instead to pursue certain for-profit business ventures.
- g. In particular, Maranatha submitted CFRs reporting as "allowable costs" costs expended to benefit certain entities owned and/or operated by Coley or Maranatha that did not provide Medicaid-funded services (the "Non-Medicaid Ventures"), including the following:
 - (1) Mighty Mite Distributors Inc., a for-profit entity created to launch an online home goods store and later an online wellness hub;
 - (2) Wellness 365 Inc., a for-profit entity operated by Coley and owned by Maranatha that was intended to promote wellness;

- (3) Caregiver Compass LLC, a for-profit entity owned 40% by Coley, 20% by Coley’s daughter, 20% by an acquaintance of Coley’s, and 20% by Maranatha, which was created to launch an online tool to help individuals choose caregivers; and
 - (4) Caregivers Connect LLC, a for-profit entity created to provide non-medical services to senior citizens.
- h. Maranatha’s board, which approved Maranatha funding these Non-Medicaid Ventures, was briefed on them by Coley.
 - i. Coley made a presentation to Maranatha’s board of directors acknowledging that “[i]t was always the plan for Maranatha to use government funds as a launching pad to create private enterprise that would enable it to not be dependent on government while at the same time fulfilling its function” consistent with its mission.
 - j. Maranatha paid Coley’s family members to perform work related to the Non-Medicaid Ventures. For example, since 2010, Maranatha paid Coley’s daughter more than \$300,000. Though much of her time was spent on work related to these Non-Medicaid Ventures, Maranatha reported her full compensation as an “allowable cost” in the CFRs.
 - k. Since 2010, Maranatha paid Coley more than \$2 million in salary and benefits, and Maranatha claimed the full amount of that compensation as “allowable” costs on its CFRs. However, Coley devoted much of his time to working on Non-Medicaid Ventures. Since 2014, Coley received annual compensation from Maranatha in excess of \$225,000, which exceeded the

\$199,000 cap established by the State’s Executive Order 38, promulgated in 2013.

1. Maranatha also paid for certain of Coley’s personal expenses, including more than \$34,000 spent on personal training sessions, as well as holiday gifts and jewelry. Maranatha reported these expenses as “allowable costs” in its CFRs.

3. Pursuant to this Stipulation, Maranatha agrees to pay and the State agrees to accept \$510,000 (five hundred and ten thousand dollars) and 60% of any Real Estate Profit (as defined in Paragraph 8) (the “State Settlement Amount”). Maranatha shall pay the \$510,000 to the State within 30 days of the Effective Date. Payment shall be made by electronic funds transfer pursuant to written instructions to be provided by MFCU. No provision of this Stipulation constitutes an agreement by the State concerning the characterization of the State Settlement Amount for purposes of the New York tax laws. Maranatha agrees that it shall not seek indemnification from any source with respect to any portion of the State Settlement Amount.

4. Maranatha shall execute and agree to the entry of a consent judgment in favor of the State and against Maranatha in the amount of the State Settlement Amount,” a copy of which is attached hereto as Exhibit A (the “Consent Judgment”). The State may use and file the Consent Judgment to obtain a security interest in any asset or property of Maranatha, but shall not engage in other collection activity with respect to the Consent Judgment so long as Maranatha fully complies with the terms of this Stipulation. Should Maranatha comply fully with the requirement to make the payment set forth in Paragraph 3 above as well as the other terms of this Stipulation, the Consent Judgment shall be deemed to be satisfied in full and, upon Maranatha’s request, the State shall file with the Clerk of the Court and deliver to Maranatha a Full Satisfaction of Judgment.

Should Maranatha fail to comply fully with the requirement to make the payment set forth in Paragraph 3 above or any other term of this Stipulation, Maranatha shall be in default of this Stipulation, in which case the State may take any of the actions set forth in Paragraph 15 below.

5. Maranatha shall cooperate with the New York State Office for People with Developmental Disabilities and promptly take all necessary steps to complete an auspice change through which Maranatha shall transition the operations of its Medicaid-funded programs to one or more other providers to ensure continuity of services (the “Auspice Change”). Maranatha shall cease operations promptly following the completion of the auspice change. Maranatha shall not submit new claims for payment or reimbursement to any state-funded health care program on or after June 30, 2023. This deadline may be extended upon the written consent of the parties.

6. Maranatha shall dissolve in accordance with Article 10 of the N-PCL and in consultation with the Charities Bureau of the Office of the New York State Attorney General. Within 60 days of submitting the final claim(s) for payment or reimbursement to a federal or state health care program, Maranatha shall submit a petition for dissolution to the OAG Charities Bureau. The OAG may determine the dissolution petition, or the OAG may, in its discretion, require Maranatha to submit the dissolution petition directly to the New York State Supreme Court. This deadline may be extended upon the written consent of the parties.

7. The board of directors of Maranatha shall remain in place to complete the dissolution process. Maranatha shall maintain a board of directors of no fewer than three (3) directors until Maranatha’s petition for dissolution is approved by the OAG or the New York State Supreme Court, and shall comply with the provisions with section 703(c) of the N-PCL.

8. Maranatha operates community residences for individuals with developmental disabilities (called Individualized Residential Alternatives), as well as a day habilitation program

at another property. These properties include 36 Chestnut Hill Road, Stone Ridge, New York; 60 Maurizi Lane, Woodstock, New York; 35-33 10th Street, Queens, New York; 110-14 159th Street, Queens, New York; 114-15 169th Street, Queens, New York; 153-10 79th Street, Queens, New York; 12-27 31st Drive, Queens, New York; and 403 Manchester Road, Suite A, Poughkeepsie, New York. To the extent Maranatha owns or holds an interest in these properties, Maranatha intends to transfer those properties and interests as part of the auspice change and wind-down process. To the extent that, if after satisfying any outstanding mortgages on these properties, Maranatha receives more than \$1 per property in exchange for transferring one or more of these properties—whether in connection with the auspice change, Maranatha’s wind-down, or otherwise—Maranatha shall pay that amount (“Real Estate Profit”) to the United States and the State of New York within 30 days of its receipt of such funds. Forty percent of any Real Estate Profit shall be paid to the United States pursuant to the instructions referenced in Paragraph 3; the remainder shall be paid to the State of New York.

9. Maranatha agrees to cooperate fully and truthfully with the State’s investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, Maranatha 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. Maranatha 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.

10. Subject to the exceptions in Paragraph 14 (concerning reserved claims) below and subject to Paragraph 15 (concerning default) and Paragraph 20 (concerning bankruptcy proceedings) below, and Paragraph 21 (concerning disclosure of financial information) below, and conditioned on Maranatha's full compliance with the terms of this Stipulation, including full payment of the State Settlement Amount to the State pursuant to Paragraph 3 above, the State releases Maranatha, including its subsidiaries and corporate predecessors, successors and assigns, from any civil monetary claim that the State has for the Covered Conduct under the NY FCA, N.Y. Exec. Law § 63(12), N.Y. Soc. Servs. Law § 145-b, and the common law theories of fraud, payment by mistake, and unjust enrichment. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Maranatha (including Coley) from liability of any kind.

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

12. Subject to the exceptions in Paragraph 14 (concerning reserved claims) below and subject to Paragraph 15 (concerning default) and Paragraph 20 (concerning bankruptcy proceedings) below, and Paragraph 21 (concerning disclosure of financial information) below, and conditioned on Maranatha's full compliance with the terms of this Stipulation, including full payment of the State Settlement Amount to the State pursuant to Paragraph 3 above, Relator, for herself and her successors, heirs, attorneys, agents, and assigns, releases Maranatha, including its subsidiaries and corporate predecessors, successors and assigns, as well as all of its current and

former officers, directors, employees, attorneys, and other agents, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Relator has against Maranatha related to or arising from the Relator Complaint; provided, however, that nothing in this Stipulation shall release any claims arising under State Fin. Law § 191 that Relator has against Maranatha or others and nothing in this Stipulation shall preclude Relator from seeking to recover her reasonable expenses and attorneys' fees and costs pursuant to State Fin. Law § 190(6).

13. In consideration of the execution of this Stipulation by Relator and the Relator's release as set forth in Paragraph 12 above, Maranatha, including its subsidiaries, predecessors, and corporate successors and assigns, as well as all of its current and former officers, directors, employees, attorneys, and other agents, releases Relator and her successors, heirs, attorneys, agents, and assigns, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Maranatha has against Relator related to or arising from the Relator Complaint.

14. Notwithstanding the releases given in Paragraph 10 above, or any other term of this Stipulation, the following claims of the State are specifically reserved and are not released by this Stipulation:

- a. any liability arising under the New York state revenue codes;
- b. any criminal liability;
- c. any civil liability that Maranatha has or may have under any state statute, regulation, or rule not covered by this Stipulation;
- d. except as explicitly stated in this Stipulation, any administrative liability, including but not limited to mandatory or permissive exclusion from the Medicaid Program;

- e. any liability to the State (or State agencies) for any conduct other than the Covered Conduct;
- f. any civil or administrative liability that any person or entity 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 10 above, including, but not limited to, any and all claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection or antitrust laws;
- g. any liability for personal injury, patient abuse or neglect arising from the Covered Conduct;
- h. any liability based upon obligations created by this Stipulation; and
- i. any liability of individuals.

15. Maranatha shall be in default of this Stipulation if Maranatha fails to pay the State Settlement Amount as set forth in Paragraph 3 above or if it fails to comply materially with any other term of this Stipulation that applies to it (“Default”). The State will provide a written Notice of Default to Maranatha of any Default in the manner set forth in Paragraph 33 below. Maranatha shall then have an opportunity to cure the Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due as set forth in Paragraph 3 and paying any additional interest accruing under the Stipulation up to the date of payment. If Maranatha fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the State to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the State Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per

annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance). In the event of an Uncured Default, the State may initiate a collection action or take any other action with respect to the unpaid portion of the amount specified in the Consent Judgment attached hereto as Exhibit A. Maranatha also agrees that the State, at its sole discretion, may (i) retain any payments previously made, rescind this Stipulation, and reinstate the claims asserted against Maranatha in the State Complaint or bring any civil and/or administrative claim, action, or proceeding against Maranatha for the claims that would otherwise be covered by the releases provided in Paragraph 10 above, with any recovery reduced by the amount of any payments previously made by Maranatha to the State under this Stipulation; (ii) take any action to enforce this Stipulation in a new action; (iii) offset the remaining unpaid balance from any amounts due and owing to Maranatha and/or affiliated companies by any department, agency, or agent of the State at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. The State shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the State pursues a collection action, Maranatha agrees immediately to pay the State the greater of (i) a ten-percent (10%) surcharge of the amount collected, or (ii) the State's reasonable attorneys' fees and expenses incurred in such an action. In the event that the State opts to rescind this Stipulation pursuant to this paragraph, Maranatha waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (i) are filed by the State against Maranatha within 120 days of written notification that this Stipulation has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on September 28, 2018. Maranatha agrees not to contest any offset, recoupment, and/or

collection action undertaken by the State pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the State.

16. Maranatha 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 Stipulation or creating the impression that this Stipulation is without factual basis. Nothing in this Paragraph affects Maranatha's (a) testimonial obligations or (b) right to take contrary legal or factual positions in defense of litigation or other proceedings to which the Attorney General is not a party.

17. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation; Relator agrees and confirms that the terms of this Stipulation are fair, adequate, and reasonable under all the circumstances, pursuant to State Fin. Law § 190(5)(b)(ii).

18. Maranatha waives and shall not assert any defenses Maranatha 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 Stipulation bars a remedy sought in such criminal prosecution or administrative action.

19. In exchange for valuable consideration provided in this Stipulation, Maranatha acknowledges the following:

- a. Maranatha has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the State of the State Settlement Amount.
- b. In evaluating whether to execute this Stipulation, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a

contemporaneous exchange for new value given to Maranatha, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

- c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.
- d. The Parties do not intend to hinder, delay, or defraud any entity to which Maranatha was or became indebted on or after the date of any transfer contemplated in this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

20. If within 91 days of the Effective Date of this Stipulation or of any payment made under this Stipulation, Maranatha commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of Debtor (a) seeking to have any order for relief of Maranatha's debts, or seeking to adjudicate Maranatha as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Maranatha or for all or any substantial part of Maranatha's assets, Maranatha agrees as follows:

- a. Maranatha shall provide MFCU immediate notice at the address contained in Paragraph 33 herein;
- b. Payment of the State Settlement Amount shall be accelerated and the full amount deemed due and owing;
- c. Maranatha's obligations under this Stipulation may not be avoided 11 U.S.C. § 547, and Maranatha shall not argue or otherwise take the position

in any such case, proceeding, or action that (i) Maranatha's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) Maranatha was insolvent at the time this Stipulation was entered into, or became insolvent as a result of the payments made to the State; or (iii) the mutual promises, covenants and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to Maranatha.

d. If any of Maranatha's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the release for Maranatha in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Maranatha for the claims that would otherwise be covered by the releases provided in Paragraph 10 above; Maranatha agrees that:

- (1) any such claims, actions, or proceedings brought by the State are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this paragraph, and Maranatha shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay;
- (2) Maranatha shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppels, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the State within 120 calendar

days of written notification to Maranatha that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on September 28, 2018, and

(3) the State has a valid claim against Maranatha in the amount no less than the full State Settlement Amount, as applicable, plus civil penalties to be determined by the Court, and the State may pursue its claim in the case, action or proceeding referenced in the first clause of this paragraph, as well as any other case, action or proceeding.

e. Maranatha acknowledges that his agreements in this paragraph are provided in exchange for valuable consideration provided in this Stipulation.

21. Maranatha has provided sworn financial disclosures and supporting documents (“Federal and State Financial Disclosures”) to the United States and the State and the State has relied on the accuracy and completeness of those Federal and State Financial Disclosures in reaching this Stipulation. Maranatha warrants that the Federal and State Financial Disclosures are complete, accurate, and current. If the State learns of asset(s) in which Maranatha had an interest at the time of the execution of this Stipulation that were not disclosed in the Federal and State Financial Disclosures, or if the State learns of any false statement or misrepresentation by Maranatha on, or in connection with, the Federal and State Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth of Maranatha as reflected in the Federal and State Financial Disclosures by \$15,000 or more, the State may at its option: (a) rescind this Stipulation and reinstate its lawsuit based on the Covered Conduct, or (b) let the Stipulation stand and collect the full Settlement Amount plus one hundred percent

(100%) of the net value of Maranatha's previously undisclosed assets. Maranatha agrees not to contest any collection action undertaken by the State pursuant to this provision, and agrees that it will immediately pay the State the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action or (ii) the State' reasonable attorneys' fees and expenses incurred in such an action. In the event that the State pursuant to this paragraph rescinds this Stipulation, Maranatha waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the State within 120 calendar days of written notification to Maranatha that this Stipulation has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on September 28, 2018.

22. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicaid contractor or any state payer, related to the Covered Conduct; and Maranatha agrees not to resubmit to any Medicaid contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

23. Maranatha 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Maranatha, including its present or former officers, directors, employees, and agents in connection with:

(1) the matters covered by this Stipulation;

(2) the State' audit(s) and civil investigation(s) of matters covered by this Stipulation;

(3) Maranatha's investigation, defense, and corrective actions undertaken in response to the State' audit(s) and civil investigation(s) in connection with matters covered by this Stipulation (including attorneys' fees);

(4) the negotiation and performance of this Stipulation; and

(5) any payment Maranatha makes to the State pursuant to this Stipulation and any payment Maranatha may make to Relator, including expenses, costs and attorneys' fees;

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 Maranatha, and Maranatha shall not charge such Unallowable Costs directly or indirectly to any contracts with the State or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Maranatha or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, Maranatha shall identify to

Medicaid fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the State, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Maranatha 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. Maranatha agrees that the State, at a minimum, shall be entitled to recoup from Maranatha 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. Any payments due after the adjustments have been made shall be paid to the State. The State, including affected agencies, reserves its rights to disagree with any calculation submitted by Maranatha or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Maranatha or any of its subsidiaries or affiliates in cost reports, cost statements, or information reports.

- d. Nothing in this Stipulation shall constitute a waiver of the rights of the State to audit, examine, or re-examine Maranatha's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

24. This Stipulation 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 as otherwise provided herein.

25. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation; provided, however, nothing in this Stipulation shall preclude Relator from seeking to recover her expenses or attorneys' fees and costs from Maranatha, pursuant to State Fin. Law § 190(6).

26. Any failure by the State to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

27. This Stipulation is governed by the laws of the State of New York. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

28. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be changed in any respect, except by a writing duly executed by the Parties or their authorized representatives.

29. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

30. This Stipulation is binding on Maranatha's successors, transferees, heirs, and assigns.

31. This Stipulation is binding on Relator's successors, transferees, heirs, and assigns.

32. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

33. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered both by (a) hand, express courier, or postage-prepaid mail and (b) by email, and shall be addressed as follows:

TO 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

TO MARANATHA:

Tina Sciocchetti
Nixon Peabody LLP
677 Broadway, Tenth Floor
Albany, New York 12207
Email: tsciocchetti@nixonpeabody.com

TO RELATOR:

Heidi Wendel
Law Office of Heidi A. Wendel PLLC
43 West 43rd Street, Suite 184
New York, New York 10036
Email: hwendel@heidiwendellaw.com

34. The effective date of this Stipulation is the date upon which the Stipulation is approved by the Court (the "Effective Date").

Agreed to by:

THE STATE OF NEW YORK

Dated: August 10, 2022

LETITIA JAMES
ATTORNEY GENERAL
STATE OF NEW YORK
MEDICAID FRAUD CONTROL UNIT

By:

/s/ Ting Ting Tam

Ting Ting Tam
28 Liberty Street, 13th Floor
New York, New York 10005
(212) 417-4077
TingTing.Tam@ag.ny.gov

Attorney for the State of New York

RELATOR

Dated: August 5, 2022

By:

Stephanie Munford
Stephanie Munford
Relator

Dated: August 5, 2022

LAW OFFICE OF HEIDI A.
WENDEL PLLC

By:

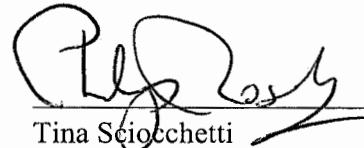
Heidi A. Wendel
Heidi Wendel
Attorney for Relator

MARANATHA HUMAN SERVICES, INC.

Dated: August 10, 2022

NIXON PEABODY LLP

By:


Tina Sciocchetti
Philip Rosenberg
Attorneys for Maranatha

MARANATHA HUMAN SERVICES, INC.

By:


Board Chair

SO ORDERED:



HON. KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

Dated: August 31, 2022

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA, and the
STATE OF NEW YORK,
ex rel. STEPHANIE MUNFORD,

Plaintiffs,

**AFFIDAVIT OF CONFESSION OF
JUDGMENT**

Civil Action No.
18-CV-8892 (KMK)

- against -

MARANATHA HUMAN SERVICES,
INC. and HENRY ALFONSO COLEY,

Defendants.

----- X

THE STATE OF NEW YORK,

Plaintiff-Intervenor,

v.

MARANATHA HUMAN SERVICES, INC. and
HENRY ALFONSO COLEY,

Defendants.

----- X

STATE OF NEW YORK)
)
) ss.:
COUNTY OF NEW YORK)

Clifford Manie, being duly sworn, deposes and says:

I am the individual named above and the Chair of the Board of Directors of Maranatha Human Services, Inc. ("Maranatha"), one of the defendants in the above-captioned matter, and as

such, I am authorized to execute this Affidavit of Confession of Judgment on behalf of Maranatha.

I hereby confess judgment against Maranatha and authorize entry thereof in the United States District Court for the Southern District of New York, and in any county in which Maranatha owns property, in favor of the State of New York in the sum of Five Hundred and Ten Thousand Dollars (\$510,000.00) and 60% of any Real Estate Profit (as defined in Paragraph 8 of the Settlement Agreement).

This confession of judgment is for a debt justly due the plaintiff the State of New York arising out of the acts set forth in the attached Settlement Agreement dated August 10, 2022, which I executed acting as Board Chair. As a result of the conduct described in the Settlement Agreement, Maranatha caused claims to be submitted to the New York State Medicaid Program for which it was not entitled to receive payment. As a result, the State of New York was falsely billed, and therefore overpaid, for claims that Maranatha submitted, as set forth in the attached Settlement Agreement.

I authorize entry of judgment against Maranatha in the United States District Court for the Southern District of New York, and in any county in which Maranatha owns property, without further notice in the amount of Five Hundred and Ten Thousand Dollars (\$510,000.00) and 60% of any Real Estate Profit at any time.



Clifford Manie
Board Chair

On this 10th day of August, 2022, before me personally came Clifford Manie, to me known, who being by me duly sworn, did depose and say that he

resides in the County of Suffolk, State of New York and is the person who executed this instrument.

Holly A. Theobary
NOTARY PUBLIC

Holly A. Theobary
Notary Public, State of New York
County of Dutchess #01TH6076363
Commission Expires 8/26/2022