

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,
ex rel. LHCSA I LLC, LHCSA II LLC, AND
LHCSA III LLC,

Plaintiffs,

**STIPULATION AND ORDER
FILED UNDER SEAL**

Civil Action No.
17-CV-2938

- against -

EDISON HOME HEALTH CARE OF
NEW YORK LLC, PREFERRED HOME
HEALTH CARE OF NEW YORK LLC *et*
al.,

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

Defendants.

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SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively, the "United States"); Edison Home Health Care of New York LLC ("Edison"), Preferred Home Health Care of New York LLC ("Preferred") (collectively "Defendants"); Samuel Aryeh Weiss ("Samuel Weiss"), Shumel B. Weiss ("Shumel Weiss"), Elliot Segel ("Segel"), Aryeh Chaim Blumstein ("Blumstein") (collectively "Former Operators"); 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 NAE Edison LLC d/b/a Edison Home Health Care of New York LLC, a limited liability company 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 946 McDonald Avenue, Brooklyn, NY 11218.

B. Defendant Assistcare Home Health Services, LLC d/b/a Preferred Home Health Care of New York LLC, a limited liability company 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 2357 60th street Brooklyn NY 11204.

C. Samuel Aryeh Weiss (“Samuel Weiss”), an individual residing in New York State, was an operator of Edison from August 12, 2009 to April 1, 2022, and Preferred from September 19, 2007 through April 1, 2022.

D. Shumel B. Weiss (“Shumel Weiss”), an individual residing in New York State, was an operator of Preferred from September 19, 2007 through April 1, 2022.

E. Elliot Segel, an individual residing in New York State, was an operator of Edison from August 12, 2009 through April 1, 2022.

F. Aryeh Chaim Blumstein, an individual residing in New York State, was an operator of Edison from January 1, 2017 through April 1, 2022.

G. 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.

H. During the period between March 1, 2012 to April 1, 2022 ("Claims Period"), Defendants and Former Operators employed approximately 46,000 home care aides.

I. Defendants 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.

J. The New York Wage Parity Act, Public Health Law § 3614-c (the "Wage Parity Act"), 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.

K. Pursuant to the Wage Parity Act, home care aides who perform Medicaid-reimbursed work in the covered areas 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").

L. 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 and Fiscal Intermediaries ("FIs"). N.Y. Pub. Health Law § 3614-c(4).

M. The Wage Parity Act unequivocally states that neither MLTCPs, LHCSAs, nor FIs shall receive payments from government agencies for any episode of care (i) 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 and (ii) reimbursed in whole or in part by the New York Medicaid program. *Id.* at §§ 3614-c(2), (5), (9).

N. During the Claims Period, LHCSAs and FIs 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).

O. 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. Edison Home Health Care of New York LLC, Preferred Home Health Care of New York LLC, 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 Defendants 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.

P. Based on the investigation in the Civil Action, the United States determined that Defendants and Former Operators failed to pay their home care aides Total Compensation pursuant to the Wage Parity Act, and caused the MLTCPs, with which Defendants contracted to provide home health care services, to submit false Medicaid claims to fiscal agents of the

State of New York for services reimbursed pursuant to Social Services Law and the Public Health Law of the State of New York during the Claims Period. These claims were relied upon by fiscal agents of the State to pay the MLTCPs, which, in turn, paid Defendants for services on dates occurring during the Claims Period. The United States will partially intervene in the Civil Action for the purpose of settlement.

Q. As a result, the United States has determined it has certain civil claims against Defendants and Former Operators arising from Defendants' and Former Operators' conduct during the Claims Period based on the following (hereinafter referred to as the "Covered Conduct"):

(1) Defendants and Former Operators, sought or caused to be sought payment funded by the Medicaid program, and received payment thereon through MLTCPs, for episodes of care performed by home care aides, whom Defendants and Former Operators were required to pay Total Compensation as required by the Wage Parity Act;

(2) Defendants made payments to home care aides during the Claims Period that included elements which if not credited toward Defendants' Wage Parity Act obligations, would cause Defendants' compensation to fall short of the required Total Compensation payments under the Wage Parity Act during such Claims Period;

(3) Defendants and Former Operators certified compliance with the Wage Parity Act to the MLTCPs with which they had contracted to provide care to Medicaid recipients;

(4) In reliance on these certifications, the MLTCPs submitted annual certifications to DOH that all services provided by or arranged for by the MLTCPs were in full compliance with the Wage Parity Act;

(5) Defendants and Former Operators, purchased or caused to be purchased, medical stop-loss insurance and reinsurance arrangements from a captive insurance company licensed under North Carolina law; and

(6) Defendants purchased such medical stop-loss and reinsurance with funds intended to be part of a health benefits program for home care aides. A portion of such funds held by the captive insurance company were later paid out in dividends and/or distributions to entities and/or individuals related to Defendants or the Former Operators.

R. Defendants and Former Operators admit, acknowledge, and accept responsibility for the Covered Conduct.

S. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relators' reasonable expenses, attorneys' fees, and costs.

T. Defendants and Former Operators have entered into a separate agreement with New York State Office of the Attorney General, Medicaid Fraud Control Unit ("MFCU") (the "MFCU Agreement") to resolve allegations that they violated the NY FCA. Among other things, that agreement requires Defendants and Former Operators to pay to New York State \$5,850,000.

U. Defendants and Former Operators have entered into an independent, separate agreement with the New York State Office of Attorney General's Labor Bureau to resolve allegations that they violated the Wage Parity Act ("the OAG Labor Bureau Agreement"). The OAG Labor Bureau Agreement requires Defendants to implement a program to ensure that they comply with the Wage Parity Act and to pay \$7,500,000.00 to current and former employees of Defendants and Former Operators who are entitled to certain compensation under the Wage Parity Act. Such requirements arise solely from New York State law.

V. Defendants and Former Operators wish to resolve any liability for the Covered Conduct, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Defendants and Former Operators shall pay Three Million Nine Hundred Thousand (\$3,900,000) (the “Federal Settlement Amount”), none of which is restitution, to the United States no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Eastern District of New York.

2. Conditioned upon the United States receiving the Federal Settlement Amount and as soon as feasible after receipt, the United States shall pay Seven Hundred and Two Thousand dollars (\$702,000) to Relators by electronic funds transfer (the “Relators’ Federal Share”). The Relators’ Federal Share does not include Relators’ reasonable expenses, attorneys’ fees and costs pursuant to 31 U.S.C. § 3730(d), which shall be paid separately by Defendants and Former Operators in accordance with Paragraph 3 of the MFCU Agreement.

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States’ receipt of the Federal Settlement Amount, the United States releases Defendants and Former Operators from any civil or administrative monetary claims the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, fraud or misrepresentation.

4. Upon the Defendants' and Former Operators' payment of the Federal Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, assigns, shareholders, members, beneficiaries and any person or entity with any ownership or equitable or beneficial interest in Relators ("Releasing Parties"), release the Defendants and Former Operators from any and all manner of claims (whether in law or equity), proceedings, liens, and causes of action of any kind or description, whether known or unknown, that the Releasing Parties have or may have or have asserted, could have asserted, or may assert in the future against Defendants or Former Operators regarding any matter whatsoever, including but not limited to any matter arising out of or related to the Covered Conduct, overpayments or allegations in the Civil Action or Relators' investigation and prosecution thereof. Upon Defendants and Former Operators payment in accord with paragraph 3 of the MFCU Agreement, the Releasing Parties expressly release Defendants and Former Operators from any liability for expenses or attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d) and N.Y. State Fin. Law § 190(6). Relators and their counsel represent and warrant that neither any claim nor any interest in any claim falling within the scope of this paragraph has been assigned, subrogated, or in any manner transferred.

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

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability of individuals who are not parties to this Agreement;
- f. Any liability for personal injury, patient abuse or neglect arising from the Covered Conduct; and
- g. Any liability based upon obligations created by this Agreement.

6. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the Relators' Federal Share, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. Defendants and Former Operators waive and shall not assert any defenses Defendants and Former Operators 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.

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

9. Defendants and Former Operators fully and finally release the Relators from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants and Former Operators have asserted, could have asserted, or may assert in the future against the Relators, related to the Covered Conduct and the Relators' investigation and prosecution thereof.

10. The Federal 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, carrier) or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare 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.

11. Defendants agree 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 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants and Former Operators, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Defendants' and Former Operators' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Defendants and Former Operators make to the United States pursuant to this Agreement and any payments that Defendants and Former Operators make to Relators, including 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 Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States 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 Defendant or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the United States, 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 Defendants 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. Defendants and Former Operators agree that the United States, at a minimum, shall be entitled to recoup from Defendants and Former Operators 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 United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable

Costs (as defined in this paragraph) on Defendants' or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

12. 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 13 (waiver for beneficiaries paragraph), below.

13. Defendants and Former Operators agree that they waive 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, or third party payors based upon the claims defined as Covered Conduct.

14. Upon receipt of the payment described in Paragraph 1, above, the United States, State, and Relators shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal as to FCA claims against the Defendants in the Civil Action pursuant to Rule 41(a)(1).

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

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

17. This Agreement is governed by the laws of the United States and where applicable and not preempted, the laws of the State of New York. 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. 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.

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

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

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

21. This Agreement is binding on Defendants' and Former Operators' successors, transferees, heirs, and assigns.

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

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

24. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

THE UNITED STATES OF AMERICA

DATED: _____

BREON PEACE
United States Attorney
MICHAEL Digitally signed by MICHAEL
BLUME
Date: 2024.09.23 08:29:51
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BY:

BLUME

MICHAEL S. BLUME
Assistant United States Attorney
Eastern District of New York

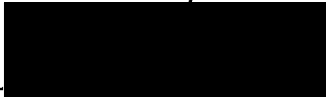
DATED: 9/20/24

SUSAN GILLIN Digitally signed by SUSAN GILLIN
Date: 2024.09.20 13:38:40 -04'00'
BY: _____
SUSAN E. GILLIN
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

DEFENDANTS

DATED: 9/16/24 BY: 
Edison Home Health Care of New York LLC

DATED: _____ BY: _____
Preferred Home Health Care of New York LLC

DATED: 9/10/24 BY: 
Counsel for Edison and Preferred

FORMER OPERATORS

DATED: _____ BY: _____
Samuel Weiss

DATED: _____ BY: _____
Shumel Weiss

DATED: _____ BY: _____
Elliot Segel

DATED: _____ BY: _____
Aryeh Chaim Blumstein

DATED: _____ BY: _____
Counsel for Former Operators

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9/10/2024
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DATED: _____ BY: _____
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Preferred Home Health Care of New York LLC

DATED: _____ BY: _____
Counsel for Edlson and Preferred

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Elliot Segel

DATED: _____ BY: _____
Aryeh Chaim Blumstein

DATED: _____ BY: _____
Counsel for Former Operators

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

DATED: 9/24/24

BY: 
Andrea Fischer, Esq.
FISCHER LEGAL GROUP
Counsel for Relators

Dated: Sept. 25, 2024
Brooklyn, New York

SO ORDERED:

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