

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, and
STATE OF NEW YORK,
ex rel. ANA BARBARA ZAYAS AND
ALEXANDRA ROJAS,

Civil Action No.
16-CV-4819

Plaintiffs,

(Kuntz, J)
(Gold, M.J.)

- against -

WILLIAMSBURG PHYSICAL THERAPY
P.C., FIRST PLUS SERVICE, INC., EURO
PHYSICAL THERAPY, P.C., ALEX
KLURFELD AND DIANA KLURFELD,

Defendants.

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SETTLEMENT AGREEMENT

This Settlement Agreement (“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”); the Office of Personnel Management (“OPM”), which administers the Federal Employees Health Benefits Program (“FEHBP”); the Office of Workers’ Compensation Programs of the United States Department of Labor (“DOL-OWCP”), which administers the Federal Employees’ Compensation Act program (“FECA”) (collectively, the “United States”); the State of New York (the “State”), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“MFCU”); Alex Klurfeld, Diana Klurfeld, Williamsburg Physical Therapy, P.C. (“WPT”), Euro Physical Therapy, P.C. (“EPT”), and First Plus Service, Inc. (“FPS”), (collectively, the “Defendants”); and Ana Barbra Zayas and Alexandra Rojas (“Relators”)

(hereinafter, all of the above are collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. WPT and EPT are New York professional corporations owned and operated by Alex Klurfeld and Diana Klurfeld to provide physical therapy to the public, including to Medicare, FECA, FEHBP, and Medicaid beneficiaries in the Eastern District of New York and elsewhere. WPT and EPT have operated under those names and others at the following addresses:

- 1) 240 South 3rd Street, Brooklyn
- 2) 182 Havermayer Street, Brooklyn
- 3) 705 Manhattan Avenue, Brooklyn
- 4) 37-49 91st Street, Queens
- 5) 452 Ft. Washington Avenue, Manhattan
- 6) 601 West 182nd Street, Manhattan
- 7) 3224 Grand Concourse Suite BA, Bronx

B. FPS is a New York corporation owned and operated by Diana Klurfeld that conducts administrative services for WPT and EPT, including medical billing and payroll.

C. On August 29, 2016, Relators filed a *qui tam* action in the United States District Court for the Eastern District of New York captioned *United States and State of New York ex rel. Ana Barbra Zayas and Alexandra Rojas v. Williamsburg Physical Therapy, P.C., First Plus Service, Inc., Euro Physical Therapy, P.C., Alex Klurfeld, and Diana Klurfeld*, Civ. No 16-4819, pursuant to the *qui tam* provisions of the 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.* (“the Civil Action”). Relators alleged that Defendants violated the FCA and NY FCA by knowingly presenting fraudulent claims or knowingly causing false claims to be presented to Medicare and Medicaid for physical therapy services that were not reimbursable. The United States and the State partially intervened in the Civil Action.

D. The United States and the State contend that Defendants submitted or caused to be submitted false claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”); the FEHBP, 5 U.S.C. §§ 8901-8914; and FECA, 5 U.S.C. §§ 8103- 8104. Specifically:

1) the United States contends that it has certain civil claims against Defendants under the FCA and the common law arising from claims submitted to Medicare, Medicaid, FEHBP and FECA, during the period from January 1, 2008, through July 27, 2018, for: (a) physical therapy services provided and/or supervised by someone other than the licensed physical therapist identified on the claim, including unlicensed aides and (b) backdated physical therapy services provided after the treatment authorization had expired; and

2) the State contends that it has certain civil claims against Defendants under the NY FCA, N.Y. Exec. Law § 63 (12); N.Y. Soc. Servs. Law § 145-b, and the common law arising from claims submitted to Medicaid, during the period from January 1, 2008, through July 27, 2018, for: (a) physical therapy services provided and/or supervised by someone other than the licensed physical therapist identified on the claim, including unlicensed aides and (b) backdated physical therapy services provided after the treatment authorization had expired.

E. The conduct described in Paragraph D is referred to hereinafter as the “Covered Conduct.”

F. Relators claim entitlement under 31 U.S.C. § 3730 (d) and N.Y. State Fin. Law § 190 (6) to a share of the proceeds of this Settlement Agreement and to Relators’ reasonable expenses, attorneys’ fees and costs.

G. Defendants wish to resolve their 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 shall pay Four Million Dollars (\$4,000,000) (the “Settlement Amount”) as follows:

- a. Defendants shall pay to the United States Two Million Eight Hundred Thousand Dollars (\$2,800,000) (“Federal Settlement Amount”), in two installments (“the federal installment payments”). Defendants shall pay the first federal installment, which shall be One Million Fifty Thousand Dollars (\$1,050,000), no later than 5 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of New York. No later than August 1, 2021, Defendants shall pay the second federal installment payment of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000) plus interest on the second payment at a rate of 0.75% per annum from April 9, 2020 through and including the day before the payment is made. This second federal installment payment shall be made by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of New York. Of the Federal Settlement Amount, Eight Hundred Thousand Dollars (\$800,000) constitutes the federal Medicaid settlement amount.
- b. Defendants shall pay to the State One Million Two Hundred Thousand Dollars (\$1,200,000) (“State Settlement Amount”), in two installments (“the

State installment payments”). Defendants shall pay the first State installment, which shall be Four Hundred and Fifty Thousand Dollars (\$450,000), no later than 5 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the State. No later than August 1, 2021, Defendants shall pay the second State installment payment of Seven Hundred and Fifty Thousand Dollars (\$750,000) and interest on the second payment at a rate of 0.75% per annum from April 9, 2020 through and including the day before the payment is made. The second State installment payment shall be made by electronic funds transfer pursuant to written instructions to be provided by the State. The State Settlement Amount represents the State Medicaid share of the Total Settlement Amount.

2. Conditioned upon the United States receiving the Federal Settlement Amount from Defendants and as soon as feasible after receipt of each of the federal installment payments, the United States shall pay 17% of each federal installment payment received by the United States to Relators by electronic funds transfer pursuant to written instructions to be provided by Relators, for a total of Four Hundred Seventy Six Thousand Dollars (\$476,000) plus applicable accrued interest on the second payment.

3. Conditioned upon the State receiving the State Settlement Amount from Defendants and as soon as feasible after receipt of each of the State installment payments, the State shall pay 17% of each State installment payment received by the State to Relators by electronic funds transfer pursuant to written instructions to be provided by Relators, for a total of Two Hundred Four Thousand Dollars (\$204,000) plus applicable accrued interest on the second State installment payment.

4. Defendants have separately negotiated with Relators to pay expenses, attorney's fees and costs, and/or wrongful termination claims under 31 U.S.C. § 3730 (d) and N.Y. State Fin. Law § 190 (6).

5. Subject to the exceptions in Paragraph 11 (concerning excluded claims) below, and conditioned upon Defendants' full payment of the Federal Settlement Amount to the United States, the United States releases Defendants from any civil or administrative monetary claim the United States has for the Covered Conduct under the FCA; 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, and fraud.

6. Subject to the exceptions in Paragraph 11 (concerning excluded claims) below, and conditioned upon Defendants' full payment of the State Settlement Amount to the State, the State releases Defendants from any civil or administrative 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; or the common law theories of payment by mistake, unjust enrichment, and fraud.

7. Conditioned upon Defendants' full payment of the Federal and State Settlement Amounts, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Defendants from any and all civil monetary claims the Relators have on behalf of themselves, the United States and the State for any conduct arising under the FCA and the NY FCA. Relators do not, and cannot, release any of the claims of the United States or of the State.

8. In consideration of the obligations of Defendants in this Agreement and the Integrity Agreement ("IA"), entered into between OIG-HHS and Defendants, and conditioned upon Defendants' full payment of the Federal and State Settlement Amounts, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined

in 42 U.S.C. § 1320a-7b(f) against Defendants under 42 U.S.C. § 1320a-7a (“Civil Monetary Penalties Law”) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 11 (concerning excluded claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Defendants from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 11, below.

9. In consideration of the obligations of Defendants in this Agreement, and conditioned upon Defendants’ full payment of the Federal and State Settlement Amounts, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the FEHBP against Defendants under 5 U.S.C. § 8902a or 5 C.F.R. Part 890 Subpart J or Part 919 for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 11 (concerning excluded claims), below, and except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). OPM expressly reserves all rights to comply with any statutory obligation to debar Defendants from the FEHBP under 5 U.S.C. § 8902a (b) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 11, below.

10. In consideration of the obligations of Defendants in this Agreement, and conditioned upon Defendants’ full payment of the Federal and State Settlement Amounts, DOL-OWCP agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the FECA against Defendants under 20 C.F.R. §§ 10.815 for the

Covered Conduct, except as reserved in Paragraph 11 (concerning excluded claims), below, and except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a 7 (a). Nothing in this Paragraph precludes the DOL-OWCP from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 11, below.

11. Notwithstanding the releases given in Paragraphs 5, 6, 7, 8, 9, and 10 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any liability arising under New York tax codes;
- c. Any criminal liability;
- d. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- e. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- g. Any liability based upon obligations created by this Agreement; and
- h. Any liability of individuals other than Alex Klurfeld and Diana Klurfeld.

12. Defendants shall be in Default if they fail to make any of the payments required in this Agreement on or before their due dates. Upon receipt of notice of Default from the United States or the State, Defendants will then have five (5) business days to cure the default (the “Cure Period”). If the defaulting Defendants fail to cure the Default within the Cure Period (“Uncured Default”), the entire remaining unpaid Settlement Amount shall be immediately due and payable by Defendants, and interest shall accrue at the rate of 12% per annum compounded

daily on the remaining unpaid principal balance, beginning five (5) business days after delivery of the notice of default. In the event of a Default, the United States and State, at their option, may: (a) rescind this Agreement and the releases contained herein and file a Complaint for the Covered Conduct as to Defendants or seek specific performance of the Agreement; (b) offset the remaining unpaid balance from any amounts due and owing Defendants by any department, agency or agent of the United States and State at the time of default; (c) file a civil action for the Covered Conduct; or (d) exercise any other rights granted by law or in equity, including referral of this matter for private collection. Defendants shall not contest any offset imposed or any collection action undertaken by the United States and State pursuant to this paragraph, either administratively or in any State or Federal court. In addition, Defendants shall pay the United States and State all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses. In the event that the United States and State opt to rescind this Agreement pursuant to this paragraph, Defendants shall not 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 relate to the Covered Conduct. In the event of Default, the State of New York will not be responsible to the United States for the State share of any unpaid balance of Medicaid damages.

13. Notwithstanding the foregoing, in the event of Uncured Default, OIG-HHS may exclude Defendants from participating in all Federal health care programs until Defendants pay the entire Settlement Amount and the default interest balance and collection costs as set forth in Paragraph 12 above. OIG-HHS will provide written notice of any such exclusion to Defendants. Defendants waive any further notice of exclusion under 42 U.S.C. § 1320a-7(b)(7), and agree not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion Defendants wish

to apply for reinstatement, Defendants must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Defendants will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option of exclusion for an Uncured Default as defined in this Paragraph is in addition to, and not in lieu of, the options otherwise identified in this Agreement or available to the United States and/or the State, in the event of Uncured Default.

14. Notwithstanding the foregoing, in the event of Uncured Default, OPM-OIG may exclude Defendants from participating in FEHBP until Defendants pay the entire Settlement Amount and the default interest balance and collection costs as set forth in Paragraph 12 above. OPM-OIG will provide written notice of any such exclusion to Defendants. Defendants waive any further notice of exclusion from FEHBP and agree not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion Defendants wish to apply for reinstatement, Defendants must submit a written request for reinstatement to OPM-OIG. Defendants will not be reinstated unless and until OPM-OIG approves such request for reinstatement. The option of exclusion for an Uncured Default as defined in this Paragraph is in addition to, and not in lieu of, the options otherwise identified in this Agreement or available to the United States and/or the State, in the event of Uncured Default.

15. Confessions of Judgment: Defendants will execute Affidavits of Confession of Judgment in the amounts of Four Million Dollars (\$4,000,000.00), in the forms annexed as Exhibits A-E, simultaneously with the execution of this Agreement. Defendants consent to the filing of said Affidavits of Confession of Judgment and Judgments thereon (the “Judgments”) without further notice.

16. 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) and N.Y. State Fin. Law § 190 (5)(b)(ii). Conditioned upon Relators' receipt of the payment described in Paragraphs 2 and 3, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States and the State, as well as their 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 NY State Fin. Law § 190, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

17. Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release Defendants, and their officers, agents, and employees, from any liability to Relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730 (d) and N.Y. State Fin. Law § 190 (6) for expenses or attorney's fees and costs other than those provided in Paragraph 4 of this agreement.

18. Defendants waive and shall not assert any defenses they 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.

19. Defendants fully and finally release the United States and the State, and their agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States, the State, or their

agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' or the State's investigation and prosecution thereof.

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

21. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any federal or state payor, related to the Covered Conduct; and Defendants agree not to resubmit to any federal or state payor any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

22. 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and the State's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' and State's 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 Defendants make to the United States and the State pursuant to this Agreement and any payments that Defendants may make to Relators, including costs and attorney's fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the IA to: (i) retain an independent review organization to perform annual reviews as described in Section III of the IA; and (ii) prepare and submit reports to the OIG-HHS

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and FEHBP (hereinafter referred to as "Unallowable Costs"). However, nothing in paragraph 21.a.(6) that may apply to the obligations undertaken pursuant to the IA affects the status of costs that are not allowable based on any other authority applicable to Defendants.

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 Defendants 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 their 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 agree that the United States and the State, at a minimum, shall be entitled to recoup from Defendants 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, and to the State. The United States and the State reserve their 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 and the State 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.

23. Defendants warrant that they have reviewed their financial situation and that Diana and Alex Klurfeld are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and (a) shall remain solvent following payment of the Settlement Amount and (b) expect to remain solvent following payment of the remainder of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a

contemporaneous exchange for new value given to Defendants, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Defendants were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

24. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, any Defendants commence, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Defendants' debts, or seeking to adjudicate any Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendants or for all or any substantial part of any Defendants' assets, Defendants agree as follows:

- a. Defendants' obligations to pay the Settlement Amount under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Defendants shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Defendants' obligations under this Agreement to pay the Settlement Amount may be avoided under 11 U.S.C. § 547; (ii) Defendants were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the United States or the State; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendants.

b. If Defendants' obligations to pay the Settlement Amount under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States and the State, at their sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the releases provided in Paragraphs 5 and 6 above. Defendants agree that:

(i) any such claims, actions, or proceedings brought by the United States and/or 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 Defendants shall not argue or otherwise contend that the United States' and/or the State's claims, actions, or proceedings are subject to an automatic stay; (ii) Defendants shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, res judicata, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the United States and/or the State within sixty (60) calendar days of written notification to Defendants that the releases have been rescinded pursuant to this paragraph; and (iii) the United States and the State have a valid claim against Defendants in the amount of \$54,000,000, and the United States and the State may pursue their claims in the case, action, or proceeding referenced in the first clause of this paragraph, as well as in any other case, action, or proceeding.

c. Defendants acknowledge that their agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

25. Defendants agree to cooperate fully and truthfully with the United States' and the State's investigations of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their 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. Defendants further agree to furnish to the United States and the State, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that have been performed by another on their behalves.

26. 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 27, below.

27. Defendants 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 the Covered Conduct.

28. Upon receipt of the payments described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41 (a)(1).

29. Except as identified in Paragraph 4, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

31. This Agreement is governed by the laws of the United States. 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.

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

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

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

35. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

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

37. All Parties consent to the United States' and the State's disclosure of this Agreement, and information about this Agreement, to the public. Defendants agree 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.


38. 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.

THE UNITED STATES OF AMERICA

Dated: 8/17/2020

By: LISA KUTLIN Digitally signed by LISA KUTLIN
Date: 2020.08.17 19:57:01 -0400
LISA D. KUTLIN
Assistant United States Attorney
Eastern District of New York

Dated: 08/13/2020

By: 
LISA M. RE
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


Dated: _____

By: _____
EDWARD M. DEHARDE
Assistant Director of Federal Employee
Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

Dated: _____

By: _____
PAUL ST. HILLAIRES
Assistant Inspector General for Legal &
Legislative Affairs
Office of the Inspector General
United States Office of Personnel
Management

Dated: 8/14/20

By: 
JENNIFER VALDIVIESO
Deputy Director for Program and System Integrity
Office of Workers' Compensation Programs
Division of Federal Employees' Compensation
United States Department of Labor


38. 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.

THE UNITED STATES OF AMERICA

Dated: _____

By: _____
LISA D. KUTLIN
Assistant United States Attorney
Eastern District of New York


Dated: 08/13/2020

By:  _____
LISA M. RE
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

Dated: _____

By: _____
EDWARD M. DEHARDE
Assistant Director of Federal Employee
Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

Dated: 8/14/2020

By:  _____
PAUL ST. HILLAIRES
Assistant Inspector General for Legal &
Legislative Affairs
Office of the Inspector General
United States Office of Personnel
Management

Dated: _____

By: _____
JENNIFER VALDIVIESO
Deputy Director for Program and System Integrity
Office of Workers’ Compensation Programs
Division of Federal Employees’ Compensation
United States Department of Labor

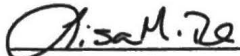
38. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA


Dated: _____

By: _____
LISA D. KUTLIN
Assistant United States Attorney
Eastern District of New York

Dated: 08/13/2020

By: 
LISA M. RE
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

Dated: 8/14/2020

By: 
EDWARD M. DEHARDE
Assistant Director of Federal Employee
Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

Dated: _____

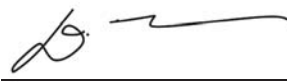
By: _____
PAUL ST. HILLAIRE
Assistant Inspector General for Legal &
Legislative Affairs
Office of the Inspector General
United States Office of Personnel
Management

Dated: _____

By: _____
JENNIFER VALDIVIESO
Deputy Director for Program and System Integrity
Office of Workers' Compensation Programs
Division of Federal Employees' Compensation
United States Department of Labor

THE STATE OF NEW YORK
LETITIA JAMES
Attorney General of the State of New York

Dated: 9/16/2020


By: 
DIANA ELKIND
Senior Counsel
Medicaid Fraud Control Unit

DEFENDANTS


Dated: 08/04/2020

By: 
ALEX KLURFELD

Dated: 08/04/2020

By: 
ALEX KLURFELD
Owner Williamsburg Physical Therapy, P.C.

Dated: 08/04/2020

By: 
ALEX KLURFELD
Owner Euro Physical Therapy, P.C.

Dated: 08/04/2020

By: 
DIANA KLURFELD

Dated: 08/04/2020

By: 
DIANA KLURFELD
Owner First Plus Service, Inc.

Dated: 08/04/2020


By: 
KAREN CHESLEY
Boies Schiller Flexner LLP
Counsel for Defendants

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, and
STATE OF NEW YORK,
ex rel. ANA BARBARA ZAYAS AND
ALEXANDRA ROJAS,

Plaintiffs,

AFFIDAVIT OF CONFESSION OF
JUDGMENT

Civil Action No.
16-CV-4819

- against -

WILLIAMSBURG PHYSICAL
THERAPY, P.C., FIRST PLUS SERVICE,
INC., EURO PHYSICAL THERAPY, P.C.,
ALEX KLURFELD AND DIANA
KLURFELD,

Defendants.

-----X

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

Alex Klurfeld, being duly sworn, deposes and says:

I am the individual named above.

I reside at 72I 5th Ave, Unit 56D, New York, NY 10022; and,

I hereby confess judgment against myself and authorize entry thereof in the United States

District Court for the Eastern District of New York, and in any county in which I own property,
in favor of plaintiffs the United States and the State of New York in the sum of Four Million
Dollars (\$4,000,000.00).

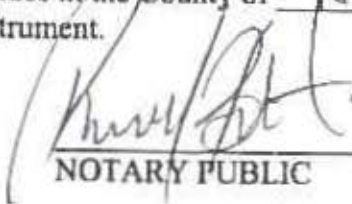
This confession of judgment is for a debt justly due the plaintiffs the United States and the State of New York arising out of the acts set forth in the attached Settlement Agreement dated _____, 2020. As a result of the conduct described in the Settlement Agreement, I caused claims to be submitted to the New York State Medicaid Program, Medicare, the Federal Employees Health Benefits Program, and to the Federal Employees' Compensation Act Program, for which I was not entitled to receive payment. As a result, the United States and the State of New York were falsely billed, and therefore overpaid, for claims that I submitted, as set forth in the attached Settlement Agreement.

I authorize entry of judgment against me in the United States District Court for the Eastern District of New York, and in any county in which I own property, without further notice in the amount of Four Million Dollars (\$4,000,000.00) at any time.



Alex Klurfeld

On this 07th day of August, 2020, before me personally came ALEX KLURFELD, to me known, who being by me duly sworn, did depose and say that he resides in the County of NI, State of NY and is the person who executed this instrument.



NOTARY PUBLIC

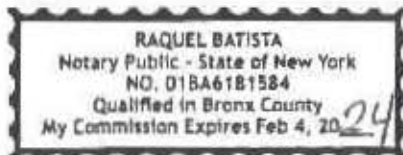


EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, and
STATE OF NEW YORK,
ex rel. ANA BARBARA ZAYAS AND
ALEXANDRA ROJAS,

Plaintiffs,

- against -

WILLIAMSBURG PHYSICAL
THERAPY, P.C., FIRST PLUS SERVICE,
INC., EURO PHYSICAL THERAPY, P.C.,
ALEX KLURFELD AND DIANA
KLURFELD,

Defendants.

-----X

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

Diana Klurfeld, being duly sworn, deposes and says:

I am the individual named above.

I reside at 721 5th Ave, Unit 56D, New York, NY 10022; and,

I hereby confess judgment against myself and authorize entry thereof in the United States

District Court for the Eastern District of New York, and in any county in which I own property,

in favor of plaintiffs the United States and the State of New York in the sum of Four Million


Dollars (\$4,000,000.00).

This confession of judgment is for a debt justly due the plaintiffs the United States and the State of New York arising out of the acts set forth in the attached Settlement Agreement dated _____, 2020. As a result of the conduct described in the Settlement Agreement, I caused claims to be submitted to the New York State Medicaid Program, Medicare, the Federal Employees Health Benefits Program, and to the Federal Employees' Compensation Act Program, for which I was not entitled to receive payment. As a result, the United States and the State of New York were falsely billed, and therefore overpaid, for claims that I submitted, as set forth in the attached Settlement Agreement.

I authorize entry of judgment against me in the United States District Court for the Eastern District of New York, and in any county in which I own property, without further notice in the amount of Four Million Dollars (\$4,000,000.00) at any time.


Diana Klurfeld

On this 07th day of August, 2020, before me personally came DIANA KLURFELD, to me known, who being by me duly sworn, did depose and say that she resides in the County of NY, State of NY and is the person who executed this instrument.


NOTARY PUBLIC

RAQUEL BATISTA
Notary Public - State of New York
NO. D1BA6181584
Qualified in Bronx County
My Commission Expires Feb 4, 2024

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA, and
STATE OF NEW YORK,
ex rel. ANA BARBARA ZAYAS AND
ALEXANDRA ROJAS,

Plaintiffs,

- against -

WILLIAMSBURG PHYSICAL
THERAPY, P.C., FIRST PLUS SERVICE,
INC., EURO PHYSICAL THERAPY, P.C.,
ALEX KLURFELD AND DIANA
KLURFELD,

Defendants.

----- X

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


Alex Klurfeld, being duly sworn, deposes and says:

I am the individual named above and the owner of Williamsburg Physical Therapy, P.C. ("Williamsburg"), the defendant in the above-captioned matter, and as such, I am authorized to execute this Affidavit of Confession of Judgment on behalf of Williamsburg.

I hereby confess judgment against Williamsburg and authorize entry thereof in the United States District Court for the Eastern District of New York, and in any county in which Williamsburg owns property, in favor of plaintiffs the United States and the State of New York in the sum of Four Million Dollars (\$4,000,000.00).

This confession of judgment is for a debt justly due the plaintiffs the United States and the State of New York arising out of the acts set forth in the attached Settlement Agreement dated _____, 2020, which I executed acting as owner of Williamsburg. As a result of the conduct described in the Settlement Agreement, Williamsburg caused claims to be submitted to the New York State Medicaid Program, Medicare, the Federal Employees Health Benefits Program, and to the Federal Employees' Compensation Act Program, for which it was not entitled to receive payment. As a result, the United States and the State of New York were falsely billed, and therefore overpaid, for claims that Williamsburg submitted, as set forth in the attached Settlement Agreement.

I authorize entry of judgment against Williamsburg in the United States District Court for the Eastern District of New York, and in any county in which Williamsburg owns property, without further notice in the amount of Four Million Dollars (\$4,000,000.00) at any time.


Alex Klurfeld
Owner Williamsburg Physical Therapy, P.C.

On this 07th day of August, 2020, before me personally came ALEX KLURFELD, to me known, who being by me duly sworn, did depose and say that he resides in the County of N.Y., State of N.Y. and is the person who executed this instrument.


NOTARY PUBLIC

RAQUEL BATISTA
Notary Public - State of New York
NO. 01BA6181584
Qualified in Bronx County
My Commission Expires Feb 4, 2024

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, and
STATE OF NEW YORK,
ex rel. ANA BARBARA ZAYAS AND
ALEXANDRA ROJAS,

Plaintiffs,

- against -

WILLIAMSBURG PHYSICAL THERAPY
P.C., FIRST PLUS SERVICE, INC., EURO
PHYSICAL THERAPY, P.C., ALEX
KLURFELD AND DIANA KLURFELD,

Defendants.

-----X

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

Alex Klurfeld, being duly sworn, deposes and says:

I am the individual named above and the owner of Euro Physical Therapy, P.C. ("Euro"), the defendant in the above-captioned matter, and as such, I am authorized to execute this Affidavit of Confession of Judgment on behalf of Euro.

I hereby confess judgment against Euro and authorize entry thereof in the United States District Court for the Eastern District of New York, and in any county in which Euro owns property, in favor of plaintiffs the United States and the State of New York in the sum of Four Million Dollars (\$4,000,000.00).

This confession of judgment is for a debt justly due the plaintiffs the United States and the State of New York arising out of the acts set forth in the attached Settlement Agreement dated _____, 2020, which I executed acting as owner of Euro. As a result of the conduct described in the Settlement Agreement, Euro caused claims to be submitted to the New York State Medicaid Program, Medicare, the Federal Employees Health Benefits Program, and to the Federal Employees' Compensation Act Program, for which it was not entitled to receive payment. As a result, the United States and the State of New York were falsely billed, and therefore overpaid, for claims that Euro submitted, as set forth in the attached Settlement Agreement.

I authorize entry of judgment against Euro in the United States District Court for the Eastern District of New York, and in any county in which Euro owns property, without further notice in the amount of Four Million Dollars (\$4,000,000.00) at any time.

[Redacted Signature]

Alex Klurfeld
Owner Euro Physical Therapy, P.C.

On this 07th day of August, 2020, before me personally came ALEX KLURFELD, to me known, who being by me duly sworn, did depose and say that he resides in the County of NY, State of NY and is the person who executed this instrument.

[Redacted Signature]

NOTARY PUBLIC

RAQUEL BATISTA
Notary Public - State of New York
NO. 01BA6181584
Qualified in Bronx County
My Commission Expires Feb 4, 2021

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA, and
STATE OF NEW YORK,
ex rel. ANA BARBARA ZAYAS AND
ALEXANDRA ROJAS,

Plaintiffs,

- against -

WILLIAMSBURG PHYSICAL
THERAPY, P.C., FIRST PLUS SERVICE,
INC., EURO PHYSICAL THERAPY, P.C.,
ALEX KLURFELD AND DIANA
KLURFELD,

Defendants.

----- X

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

Diana Klurfeld, being duly sworn, deposes and says:

I am the individual named above and the owner of First Plus Service, Inc. ("FPS"), the defendant in the above-captioned matter, and as such, I am authorized to execute this Affidavit of Confession of Judgment on behalf of FPS.

I hereby confess judgment against FPS and authorize entry thereof in the United States District Court for the Eastern District of New York, and in any county in which FPS owns property, in favor of plaintiffs the United States and the State of New York in the sum of Four Million Dollars (\$4,000,000.00).

This confession of judgment is for a debt justly due the plaintiffs the United States and the State of New York arising out of the acts set forth in the attached Settlement Agreement dated _____, 2020, which I executed acting as owner of FPS. As a result of the conduct described in the Settlement Agreement, FPS caused claims to be submitted to the New York State Medicaid Program, Medicare, the Federal Employees Health Benefits Program, and to the Federal Employees' Compensation Act Program, for which it was not entitled to receive payment. As a result, the United States and the State of New York were falsely billed, and therefore overpaid, for claims that FPS submitted, as set forth in the attached Settlement Agreement.

I authorize entry of judgment against FPS in the United States District Court for the Eastern District of New York, and in any county in which FPS owns property, without further notice in the amount of Four Million Dollars (\$4,000,000.00) at any time.



Owner First Plus Service, Inc.

On this 07th day of August, 2020, before me personally came DIANA KLURFELD, to me known, who being by me duly sworn, did depose and say that she resides in the County of DY, State of DY and is the person who executed this instrument.



NOTARY PUBLIC

RAQUEL BATISTA
Notary Public - State of New York
NO. 01BA6181584
Qualified in Bronx County
My Commission Expires Feb 4, 2024