

Clerk's Office
Filed Date: 3/10/2022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT OF
NEW YORK
BROOKLYN OFFICE

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

Plaintiffs,

- against -

CROWNE OF LIFE CARE Inc., *et al.*,

Defendant.

**STIPULATION AND ORDER
FILED UNDER SEAL**



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

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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"); the State of New York (the "State"), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit ("MFCU"); Crown of Life Care NY LLC ("Crown"), 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 Crown, a for-profit corporation organized under the laws of the State of New York, is a licensed home care services agency as defined in Article 36 of the New York

Public Health Law Section 3206(13) (“LHCSA”) with its principal place of business located at 1368 60th Street, Brooklyn, New York 11219.

B. Toby Kahan (“Kahan”), an individual residing in the State of New York, is the owner and operator of Crown.

C. 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.

D. During the period relevant to this Agreement, Crown employed approximately 300 home care aides.

E. Crown 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.

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

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

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

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

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

K. 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. Crowne of Life Care Inc., et al.*, in the United States District Court for the Eastern District of New York [REDACTED] (Glasser, J.) (the "Civil Action"). Relators alleged, *inter alia*, that defendant Crown 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.

L. Based on the investigation in the Civil Action, the United States and the State determined that Crown caused the MLTCPs, with which Crown contracted to provide home health care services, to submit false Medicaid claims to fiscal agents of the State of New York pursuant to Social Services Law and the Public Health Law of the State of New York during the period from April 1, 2014 through December 31, 2018 (“Claims Period”). These claims were relied upon by fiscal agents of the State to pay the MLTCPs, which, in turn, paid Crown for services on dates occurring during the Claims Period. The United States and the State will partially intervene in the Civil Action for the purpose of settlement.

M. As a result, the United States and the State contend that they have certain civil claims against Crown arising from Crown’s conduct during the Claims Period (hereinafter referred to in this Recital M as the “Covered Conduct”):

- (1) Crown did not pay its home care aides the requisite Total Compensation pursuant to the Wage Parity Act;
- (2) Crown sought payment from Medicaid, and received payment thereon, through MLTCPs, for episodes of care performed by home care aides, whom Crown did not properly compensate under the Wage Parity Act;
- (3) Crown certified compliance with the Wage Parity Act to the MLTCPs with which it 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) Utilizing funds intended for benefits to home care aides, Crown purchased medical stop-loss insurance; and

(6) The medical stop-loss insurance purchased by Crown was subject to reinsurance arrangements through which Crown and/or related parties received dividend payments.

N. Crown admits, acknowledges, and accepts responsibility for the Covered Conduct.

O. Relators claim entitlement under 31 U.S.C. § 3730(d) and N.Y. State Fin. Law §§ 190(6) and (7) to a share of the proceeds of this Settlement Agreement and to Relators' reasonable expenses, attorneys' fees, and costs.

P. Crown has entered into an independent, separate agreement with the New York State Office of Attorney General Labor Bureau to resolve allegations that it violated New York's Wage Parity Act, Public Health Law § 3614-c ("the OAG Labor Bureau Agreement"). That separate agreement, to which the United States is not a party, requires Defendant to implement a program to ensure that it complies with the Wage Parity Act and requires Defendant to pay one million five hundred seventy-eight thousand and fifty dollars (\$1,578,050.00) to current and former employees of Crown who are entitled to certain compensation under the Wage Parity Act. Such requirements arise solely from New York State law.

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

TERMS AND CONDITIONS

1. As payment to the United States and the State for the Covered Conduct, Crown shall pay One Million Four Hundred Thousand dollars (\$1,400,000.00) (the "Total Settlement Amount"), plus interest at a rate of one and a half percent (1.5%) per annum from the Effective Date of this Agreement (as defined in Paragraph 44 below) to the date of the final payment.

2. Crown shall pay to the United States a total of Five Hundred Sixty Thousand dollars (\$560,000.00) plus interest as set forth above (“Federal Settlement Amount”) 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, to be paid as follows (“Federal Installment Payments”):

- a. One Hundred Thousand dollars (\$100,000.00) and interest in the amount of Five Thousand Nine Hundred Sixty dollars and Fifty-Five cents (\$5960.55), no later than September 30, 2022;
- b. Ninety Thousand dollars (\$90,000.00) and interest in the amount of Six Thousand Nine Hundred dollars (\$6900.00), no later than September 30, 2023;
- c. Ninety Thousand dollars (\$90,000.00) and interest in the amount of Five Thousand Five Hundred Sixty-Five dollars and Twenty-One cents (\$5565.21), no later than September 30, 2024; and
- d. Two Hundred Eighty Thousand dollars (\$280,000.00) and interest in the amount of Four Thousand Two Hundred dollars (\$4200.00), no later than September 30, 2025.

The Federal Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

3. Crown shall pay to the State a total of Eight Hundred Forty Thousand dollars (\$840,000.00) plus interest as set forth above (“State Settlement Amount”), by electronic funds transfer pursuant to written instructions to be provided by MFCU to be paid as follows (“State Installment Payments”):

- a. One Hundred Fifty Thousand dollars (\$150,000.00) and interest in the amount of Eight Thousand Nine Hundred Forty dollars and Eighty-Two cents (\$8940.82), no later than September 30, 2022;

- b. One Hundred Thirty-Five Thousand (\$135,000.00) and interest in the amount of Ten Thousand Three Hundred Fifty dollars (\$10,350.00), no later than September 30, 2023;
- c. One Hundred Thirty-Five Thousand dollars (\$135,000.00) and interest in the amount of Eight Thousand Three Hundred Forty-Seven dollars and Eighty-One cents (\$8347.81), no later than September 30, 2024; and
- d. Four Hundred Twenty Thousand dollars (\$420,000.00) and interest in the amount of Six Thousand Three Hundred dollars (\$6300.00), no later than September 30, 2025.

The State Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

4. If Crown is to be sold, acquired, merged, or transferred, or a significant portion of the assets of Crown is to be sold, merged, or transferred into another non-affiliated entity, Crown shall provide the United States and the State 30 days' notice prior to the effective date of the proposed sale, acquisition, merger, or transfer, and all remaining payments owed pursuant to the Settlement Agreement shall be accelerated and become due and payable on the effective date of the proposed sale, acquisition, merger, or transfer. Further, no current or former officer, director, employee, member, manager, or shareholder of Crown may accept or receive any remuneration of consideration relating to any such sale, acquisition, merger, or transfer, including but not limited to, any portion of the proceeds of such sale, acquisition, merger, or transfer, directly or indirectly, until the Total Settlement Amount is paid in full.

5. On an annual basis, no later than October 31st of each year, until the Total Settlement Amount is paid in full or September 30, 2025, whichever is sooner, Crown shall provide

to the United States and the State a completed "Business Financial Disclosure Statement- United States Attorney's Office Eastern District of New York".

6. Crown acknowledges that its acts and the acts of persons acting in concert with it caused losses to the United States and the State of at least \$1,400,000.00 and exposed Crown to additional penalties. In addition to all other obligations in connection with this Agreement, and notwithstanding any term in this Agreement to the contrary, in the event that, during any calendar year from the date of execution of this Agreement to the date of Crown's final payment of the Total Settlement Amount, Crown's total combined Net Income or Profit exceeds \$50,000.00, Crown shall remit to the United States and the State all such income in excess of \$50,000.00 and in excess of any Tax Liabilities paid to the federal or state tax authorities, until such time as the sum total collected by the United States and the State under this Agreement equals the Total Settlement Amount. The term "Tax Liabilities" shall mean all federal and state income taxes due in any calendar year to the United States Internal Revenue Service and/or the New York State Department of Taxation and Finance, including any penalties and interest, in repayment of any tax liability due from any year preceding the current tax year. The term "Net Income or Profit" shall mean the entity's gross income minus costs of goods sold, expenses, depreciation and amortization, interest, and taxes for the defined period. Payment under this paragraph, if any, shall be due no later than October 31st of that year.

7. Kahan, individually and as owner of Crown, acknowledges that her acts and the acts of persons acting in concert with her caused losses to the United States and the State of at least \$1,400,000.00 and exposed Crown to additional penalties. In addition to all other obligations in connection with this Agreement, and notwithstanding any terms in this Agreement to the contrary, in the event that, during any calendar year from the date of execution of this Agreement to the date

of Crown's final payment of the Total Settlement Amount, Kahan's total combined Annual Gross Income exceeds \$250,000.00, Kahan shall remit to the United States and the State all such income in excess of \$250,000.00 and in excess of any Tax Liabilities paid to the federal or state tax authorities, until such time as the sum total collected by the United States and the State under this Agreement equals the Total Settlement Amount. The term "Tax Liabilities" shall mean all federal and state income taxes due in any calendar year to the United States Internal Revenue Service and/or the New York State Department of Taxation and Finance, including any penalties and interest, in repayment of any tax liability due from any year preceding the current tax year. The term "Annual Gross Income" shall mean annual gross income as determined under the federal tax law, and including but not limited to the sum total of any gifts, loans, inheritances, insurance proceeds, disbursements, partnership income, ownership draw, royalties, sale of assets (including installment payments), bonuses, commissions, fringe benefits, and/or dividends received by Kahan. Payment under this paragraph, if any, shall be due no later than October 31st of that year.

8. In consideration for the United States' and the State's agreement to accept payment over time as delineated in paragraphs 2 and 3 above, the Parties agree that Crown and Kahan shall execute and the United States and the State shall file consent judgments (the stipulation for consent judgment is attached hereto as Attachment A) against Crown and Kahan in the amount of One Million Four Hundred Thousand dollars (\$1,400,000.00) less any payments made, plus all costs of collection, including attorneys' fees and expenses incurred equal to ten percent (10%) of the total amount owed, post-judgment interest at the default rate referenced in Paragraph 9(a) below, and other proper relief without further notice to Crown and Kahan. The United States and/or the State, in their sole discretion, may exercise any rights granted by law or in equity to collect on the debt. Crown and Kahan agree not to contest any consent judgment, offset, or any collection action

undertaken by the United States and/or the State pursuant to this paragraph, either administratively or in any state or federal court. The United States and the State shall take all measures available to execute on the consent judgment.

9. The Total Settlement Amount represents the amount the United States and the State are willing to accept in compromise of their civil claims arising from the Covered Conduct due solely to Crown's financial condition as reflected in the Financial Disclosures referenced in Paragraphs 22 and 23.

- a. In the event that Crown fails to pay the Federal Settlement Amount or the State Settlement Amount as provided in the payment schedules set forth in Paragraphs 2 and 3 above, Crown shall be in Default of Crown's payment obligations ("Default"). The United States and/or the State will provide a written Notice of Default, and Crown shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Crown, or to such other representative as Crown shall designate in advance in writing. If Crown 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 United States and/or the State to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Total 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).

- b. In the event of Uncured Default, Crown agrees that the United States and/or the State, at their sole discretion, may (i) execute upon the consent judgment provided under Paragraph 8 above, (ii) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Crown for the claims that would otherwise be covered by the releases provided in Paragraph 14 and 15 below, with any recovery reduced by the amount of any payments previously made by Crown to the United States and the State under this Agreement; (iii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iv) offset the remaining unpaid balance from any amounts due and owing to Crown and/or affiliated companies by any department, agency, or agent of the United States or the State at the time of Default or subsequently; and/or (v) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States and 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 a complaint is filed pursuant to subsection (ii) or (iii) of this paragraph, Crown agrees not to contest it in any way. In the event the

United States or the State pursues a collection action, Crown agrees immediately to pay the United States and the State the greater of (i) a ten percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' and the State's reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States or the State opts to rescind this Agreement or file a civil action for the Covered Conduct pursuant to this paragraph, Crown 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 are filed by the United States or the State related to the Covered Conduct, except to the extent these defenses were available on May 15, 2017. Crown agrees not to contest any offset, recoupment, and/or collection action undertaken by the United States or the State pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States or the State.

10. In the event of Uncured Default, OIG-HHS may exclude Crown from participating in all Federal health care programs until Crown pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Crown. Crown waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7) and agrees 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, Crown wishes to apply for reinstatement, it must submit a written request for reinstatement to

OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Crown will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

11. Crown waives and shall not assert any defenses Crown may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

12. The United States and the State agree to pay Relators eighteen percent (18%) of each Federal and State Installment Payment pursuant to the following conditions:

- a. Conditioned upon the United States receiving each Federal Installment Payment from Crown as set forth in Paragraph 2 above, and as soon as feasible after receipt, the United States shall pay 18% of each Federal Installment Payment to Relators by electronic funds transfer pursuant to written instructions to be provided by counsel for Relators.
- b. Conditioned upon the State receiving each State Installment Payment from Crown as set forth in Paragraph 3 above, and as soon as feasible after receipt, the State shall pay 18% of each State Installment Payment to Relators by check, pursuant to written instructions provided by counsel for Relators.

13. Crown shall pay Twenty-Eight Thousand dollars (\$28,000.00) to Relators for expenses, and attorney's fees and costs.

14. Subject to the exceptions in Paragraph 17 (concerning reserved claims), Paragraph 24 (concerning disclosure of assets), Paragraph 26 (concerning bankruptcy proceedings), below, and Paragraph 9 (concerning default), above, and conditioned upon Crown's full payment of the Federal Settlement Amount to the United States, the United States releases Crown from any civil or administrative monetary claims the United States has for the Covered Conduct under the FCA, 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, and fraud.

15. Subject to the exceptions in Paragraph 17 (concerning reserved claims), Paragraph 24 (concerning disclosure of assets), Paragraph 26 (concerning bankruptcy proceedings), below, and Paragraph 9 (concerning default), above, and conditioned upon Crown's full payment of the State Settlement Amount to the State, the State releases Crown from any civil monetary claim it has for the Covered Conduct under the NY FCA; N.Y. Exec. Law § 63(12); N.Y. Soc. Servs. Law § 145-b; or the common law theories of payment by mistake, unjust enrichment, and fraud.

16. Subject to the exceptions in Paragraph 17 (concerning reserved claims), Paragraph 24 (concerning disclosure of assets), Paragraph 26 (concerning bankruptcy proceedings), below, and Paragraph 9 (concerning default), above, and conditioned upon Crown's full payment of the Total Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Crown from any civil monetary claims the Relators have on behalf of the United States for the Covered Conduct under the FCA, 31 U.S.C. §§ 3729-3733, and on behalf of the State for the Covered Conduct under the NY FCA.

17. Notwithstanding the releases given in Paragraphs 14, 15, and 16 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State are specifically reserved and not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any civil, criminal, or administrative liability arising under State revenue codes;
- c. Any criminal liability;
- d. Any liability of individuals;
- e. Any liability for personal injury, patient abuse or neglect arising from the Covered Conduct;
- f. Any civil or administrative liability Crown 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 15 above, including but not limited to, any and all claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- g. Any liability which may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid program on a capitated basis, other than liability of Crown to the State for the Covered Conduct;
- h. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs and the State's Medicaid Program;
- i. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

- j. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct; and
- k. Any liability based upon obligations created by this Agreement.

18. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to the Agreement but rather, agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to U.S.C. § 3730 (c)(2)(B) and N.Y. State Fin. Law § 190 (5)(b)(ii). Conditioned upon Relators' receipt of the payments described in Paragraph 12 above, 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 against Crown or, with respect to Crown, any claims arising under 31 U.S.C. § 3730, N.Y. State Fin. Law § 190, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action against Crown.

19. Crown fully and finally releases the United States and the State, and their agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees and costs, and expenses of every kind and however denominated) that Crown has 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. Crown fully and finally releases Relators from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Crown has asserted, could have asserted, or may assert in the future against Relators, related to the Covered Conduct, the Civil Action, and the Relators' investigation and prosecution thereof.

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

22. Crown has provided sworn financial disclosures and supporting documents on December 7, 2020 and February 9, 2021 (together "Financial Disclosures") to the United States and State, and the United States and the State have relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. Crown warrants that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement.

23. Kahan has provided a sworn financial disclosure and supporting documents on November 12, 2020 (together "Kahan Financial Disclosures") to the State, and the State has relied on the accuracy and completeness of the Kahan Financial Disclosures in reaching this Agreement.

24. If the United States or the State learns of asset(s) in which Crown or Kahan had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy Crown's obligations under this Agreement) that were not disclosed in the Financial Disclosures or the Kahan Financial Disclosures, or if the United States or the State learns of any false statement or misrepresentation by Crown on, or in connection with, the Financial Disclosures or the Kahan Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$70,000 or more, or the Kahan Financial Disclosures by \$70,000 or more, the United States and State may at their option: (a) rescind this Agreement and reinstate its

suit or file suit based on the Covered Conduct, or (b) collect the Total Settlement Amount in accordance with the Agreement plus one hundred percent (100%) the net value of Crown's previously undisclosed assets. Crown agrees not to contest any collection action undertaken by the United States and the State pursuant to this provision and agrees that it will immediately pay the United States and the State the greater of (i) a ten percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) all reasonable attorneys' fees and expenses incurred in such action.

25. In the event that the United States and the State, pursuant to Paragraph 24 (concerning disclosure of assets), above, opts to rescind this Agreement, Crown 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 relate to the Covered Conduct, except to the extent these defenses were available on May 15, 2017.

26. In exchange for valuable consideration provided in this Agreement, Crown acknowledges the following:

- a. Crown 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 United States and the State of the Total Settlement Amount.
- b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Crown, 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 Crown was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. §548(a)(1).
- e. If Crown's obligations 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) or if, before the Total Settlement Amount is paid in full, Crown or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Crown's debts, or to adjudicate Crown as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Crown or for all or any substantial part of Crown's assets, (i) the United States and the State may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Crown for the claims that would otherwise be covered by the releases provided in Paragraphs 14 and 15 above; (ii) the United States and the State have an undisputed, noncontingent, and liquidated allowed claim against Crown in the amount of four million two hundred thousand dollars (\$4,200,000.00) plus penalties, less any payments received pursuant to this

Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States or the State by Crown, a receiver, trustee, custodian, or other similar official for Crown; and (iii) if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States and the State shall not be responsible for the return of any amounts already paid by the United States or the State to the Relators; and (iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States or the State to the Relator pursuant to Paragraph 12 are recovered from the United States or the State in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment made under this Agreement, Relators shall, within thirty days of written notice from the United States or the State to the undersigned Relators' counsel, return to the United States all amounts recovered from the United States and return to the State all amounts recovered from the State.

- f. Crown agrees that any civil and/or administrative claim, action, or proceeding brought by the United States or the State under Paragraph 26.e is not subject to an "automatic stay" pursuant to 11 U.S.C. §362(a) because it would be an exercise of the United States' and the State's police and regulatory power. Crown shall not argue or otherwise contend that the United States' or the State's claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C.

§362(d)(1). Crown waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States or the State within 120 days of written notification to Crown that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on May 15, 2017.

27. Crown agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Crown, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement and the OAG Labor Bureau Agreement;


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

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

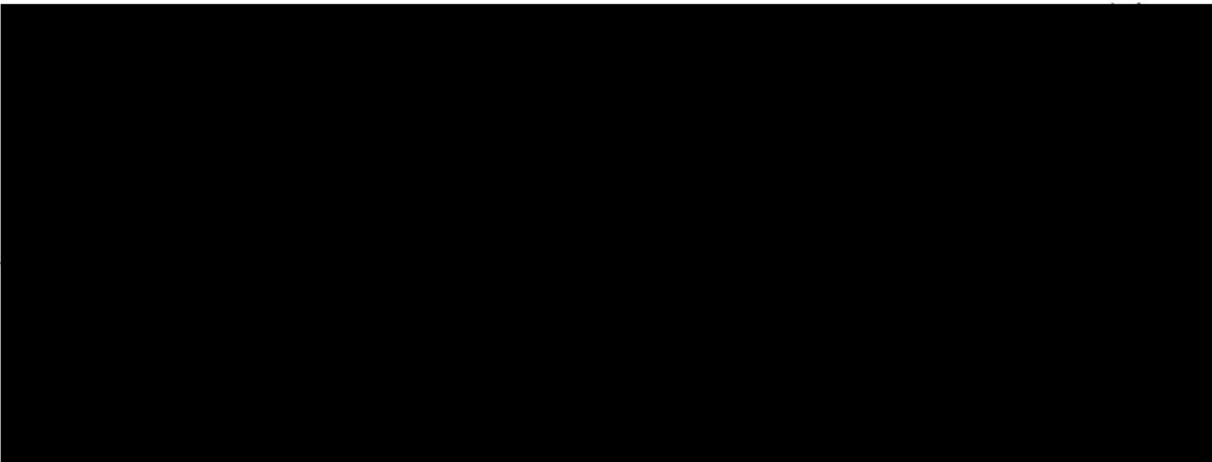
(4) the negotiation and performance of this Agreement; and

(5) the payments Crown makes to the United States and the State pursuant to this Agreement and any payments Crown makes to Relators, including costs and attorney's 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 Crown, and Crown shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid Program or any MLTCP, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Crown or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Crown further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicaid fiscal intermediaries, carriers, and/or contractors, and Medicaid fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the 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 Crown 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. Crown agrees that the United States and the State, at a minimum, shall be entitled to recoup from Crown any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted cost reports, information reports, cost statements, or requests for payment.

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

29. 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 30 (waiver for beneficiaries), below.

30. Crown agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as the Covered Conduct.

31. Upon receipt of the final payments described in Paragraphs 2 and 3, above, the United States and the State shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action as to Crown pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii).

32. Except as identified in Paragraph 13 above each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation of and performance of this Agreement.

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

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

35. 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.

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

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

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

39. This Agreement is binding on Crown's successors, transferees, heirs, and assigns.

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

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

42. Any failure by the United States or the State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the United States and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

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

IF TO THE ATTORNEY GENERAL and the STATE:

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

IF TO THE UNITED STATES:

U.S. Attorney's Office, Eastern District of New York State Office of the Attorney General
Attn: Chief, Civil Health Care Fraud
271-A Cadman Plaza East, 7th Floor
Brooklyn, New York 11201
Telephone: (718) 718-254-6528
Jolie.Apicella@usdoj.gov

IF TO CROWN:

Richard S. Harrow, Esq.
O'Connor & Aronowitz
54 State Street, 9th Floor
Albany, NY 12207
Telephone: (518) 462-5601
rharrow@oalaw.com

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

THE UNITED STATES OF AMERICA

DATED: _____

BREON PEACE
United States Attorney

BY: **MICHAEL BLUME**
Digitally signed by MICHAEL BLUME
Date: 2022.03.07 09:48:05 -0500

MICHAEL S. BLUME
SEAN P. GREENE-DELGADO
Assistant United States Attorneys
Eastern District of New York

DATED: _____

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

THE STATE OF NEW YORK

LETTITIA JAMES
Attorney General of the State of New York

DATED: _____

BY: _____

JILL D. BRENNER
HILLARY GRAY CHAPMAN
TING TING TAM
Special Assistant Attorneys General

DEFENDANT CROWN

DATED: _____

BY: _____

Toby Kahan, Owner
CROWN OF LIFE NY LLC

DATED: _____

BY: _____

Richard S. Harrow
O'CONNELL & ARONOWITZ
Counsel for Crown of Life NY LLC

DATED: _____

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

THE STATE OF NEW YORK

LETTITIA JAMES
Attorney General of the State of New York

DATED: 3/4/22

BY: _____

JILL D. BRENNER
HILLARY GRAY CHAPMAN
TING TING TAM
Special Assistant Attorneys General

DEFENDANT CROWN

DATED: _____

BY: _____

Toby Kahan, Owner
CROWN OF LIFE NY LLC

DATED: _____

BY: _____

Richard S. Harrow
O'CONNELL & ARONOWITZ
Counsel for Crown of Life NY LLC

DATED: _____

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

THE STATE OF NEW YORK

LETTIA JAMES
Attorney General of the State of New York

DATED: _____


BY: _____

JILL D. BRENNER
HILLARY GRAY CHAPMAN
TING TING TAM
Special Assistant Attorneys General

DEFENDANT CROWN

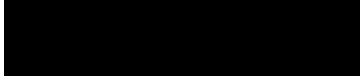
DATED: 2/25/2022

BY: _____


Toby Kahan, Owner
CROWN OF LIFE NY LLC

DATED: 2/25/2022

BY: _____


Richard S. Harrow
O'CONNELL & ARONOWITZ
Counsel for Crown of Life NY LLC

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

DATED: _____

BY:



Andrea Fischer, Esq.
FISCHER LEGAL GROUP
As Power of Attorney for Relators

DATED: _____

BY:



Andrea Fischer, Esq.
FISCHER LEGAL GROUP
Counsel for Relators

Dated: 3/9, 2022
New York, New York

SO ORDERED:

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





ATTACHMENT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

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

Plaintiffs,

- against -

CROWNE OF LIFE CARE Inc., *et al.*,

Defendant.

**STIPULATION TO ENTER
CONSENT JUDGMENT**



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

-----X

STIPULATION TO ENTER CONSENT JUDGMENT

WHEREAS, 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”); the State of New York (the “State”), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“MFCU”); Crown of Life Care NY LLC (“Crown”), and LHCSA I LLC, LHCSA II LLC, and LHCSA III LLC entered in a settlement agreement effective February __, 2022 (the “Settlement Agreement”) to resolve, for certain “Covered Conduct,” as defined by the Settlement Agreement, claims asserted on behalf of the United States and the State against Crown under the federal and New York False Claims Acts; the federal Civil Monetary Penalties Law; the federal Program Fraud Civil Remedies Act; the New York Executive Law; the New York Social Services Law; and the common law;

WHEREAS, the Settlement Agreement, at Paragraphs 2 and 3, requires Crown to make payments to the United States and to the State totaling \$1,400,000 over a period of time (by no later than September 30, 2025), with interest accruing at 1.5% on an annual basis;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties that:

In accordance with Paragraph 8 of the Settlement Agreement, a Judgment will be entered against Crown and Toby Kahan in the amount of One Million Four Hundred Thousand dollars (\$1,400,000.00) less any payments made, plus all costs of collection, including attorneys' fees and expenses incurred equal to ten percent (10%) of the total amount owed, plus post-judgment interest of 12.0% per annum, compounded daily from the date of Default as defined in Paragraph 9 of the Settlement Agreement.

The total amount shall be payable to the United States and the State pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of New York and by MFCU.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR STIPULATION TO ENTER CONSENT JUDGMENT IN

THE UNITED STATES OF AMERICA

DATED: _____

BY: BREON PEACE
United States Attorney
MICHAEL BLUME
MICHAEL S. BLUME
SEAN P. GREENE-DELGADO

Digitally signed by MICHAEL
BLUME
Date: 2022.03.04 07:48:24
-05'00'

THE STATE OF NEW YORK

LETITIA JAMES
Attorney General of the State of New York

DATED: _____

BY: _____
JILL D. BRENNER
HILLARY GRAY CHAPMAN
TING TING TAM
Special Assistant Attorneys General

DEFENDANT CROWN

DATED: 2/25/2022

BY: _____
Toby Kahan, Owner
CROWN OF LIFE NY LLC
For Crown of Life NY LLC and for herself

DATED: 2/25/2022

BY: _____
Richard Harrow
O'CONNELL & ARONOWITZ
Counsel for Crown of Life NY LLC and Toby Kahan

[SIGNATURE PAGE FOR STIPULATION TO ENTER CONSENT JUDGMENT IN
[REDACTED]

THE UNITED STATES OF AMERICA

DATED: _____

BREON PEACE
United States Attorney

BY: _____
MICHAEL S. BLUME
SEAN P. GREENE-DELGADO

THE STATE OF NEW YORK

LETTITIA JAMES
Attorney General of the State of New York

DATED: 3/4/22

BY: [REDACTED]
JILL D. BRENNER
HILLARY GRAY CHAPMAN
TING TING TAM
Special Assistant Attorneys General

DEFENDANT CROWN

DATED: _____

BY: _____
Toby Kahan, Owner
CROWN OF LIFE NY LLC
For Crown of Life NY LLC and for herself

DATED: _____

BY: _____
Richard Harrow
O'CONNELL & ARONOWITZ
Counsel for Crown of Life NY LLC and Toby Kahan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

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

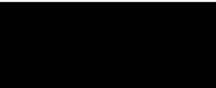
Plaintiffs,

- against -

CROWNE OF LIFE CARE Inc., *et al.*,

Defendant.

JUDGMENT



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

-----X

JUDGMENT

After consideration of the Stipulation to Enter Consent Judgment as agreed to by the United States of America, the State of New York, Crown of Life Care NY LLC, and Toby Kahan, it is hereby ORDERED that Judgment is entered in favor of the United States of America and the State of New York and against Crown of Life Care NY LLC and Toby Kahan in the amount of One Million Four Hundred Thousand dollars (\$1,400,000.00) less any payments made pursuant to the Settlement Agreement, plus all costs of collection, including attorneys' fees and expenses incurred equal to ten percent (10%) of the total amount owed, plus post-judgment interest of 12.0% per annum, compounded daily from the date of Default as defined in Paragraph 9 of the Settlement Agreement

/s/

SO ORDERED:

Brooklyn, New York
3/9, 2022

/s/ I. Leo Glasser, U.S.D.J.
HONORABLE I. LEO GLASSER
United States District Judge, E.D.N.Y.