

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA ex rel.)	
PENNY A. MCGUIRE,)	
)	
Plaintiff,)	No. 19 C 3015
)	
v.)	Chief Judge Pallmeyer
)	
BRYNWOOD MYOFASCIAL THERAPY,)	Filed <i>In Camera</i> and Under Seal
LLC; MARLA J. MONGE; and)	
MALGORZATA ZASADNY;)	
)	
Defendants.)	


CONSENT JUDGMENT

Upon consent of the parties, and the court being fully advised:

IT IS HEREBY ORDERED that:

1. Judgment is entered in favor of the United States of America against Defendants Brynwood Myofascial Therapy, LLC and Malgorzata Zasadny in the amount of \$953,959.00, as provided in the Consent Judgement and Settlement Agreement attached hereto as Exhibit A;
2. Judgment is entered in favor of the United States of America against Defendant Marla J. Monge in the amount of \$615,345.00, as provided in the Consent Judgement and Settlement Agreement attached hereto as Exhibit B;
3. Interest at a rate of 4% shall accrue and will be compounded annually until paid in full; and
4. This case is dismissed with prejudice as to all defendants, specifically Defendants Brynwood Myofascial Therapy, LLC, Marla J. Monge; and Malgorzata Zasadny.

This 22nd day of December, 2023.



United States District Judge

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No.
)
BRYNWOOD MYOFASCIAL THERAPY,) Judge
LLC, MALGORZATA ZASADNY,)
individually, and MARLA J. MONGE,)
individually,)
)
Defendant.)

CONSENT JUDGMENT AND SETTLEMENT AGREEMENT

This Consent Judgment and 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) (collectively, the “United States”), Brynwood Myofascial Therapy, LLC, and Malgorzata Zasadny, (collectively, “Defendants”), and Penny McGuire (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Defendant Brynwood Myofascial Therapy, LLC (“Brynwood”) has been in business since at least April 2012, with its office and principal place of business located at 6072 Brynwood Dr., Ste. 102, Rockford, Illinois 61114-5829. Brynwood offers myofascial release therapy described as a hands-on technique that involves applying gentle, sustained pressure into the myofascial connective tissue restrictions to eliminate pain and restore motion.

B. Marla J. Monge (“Monge”) is a licensed massage therapist. Monge opened Brynwood in 2010 as the sole owner and practitioner. Monge sold her ownership interest in the company effective January 1, 2019.

C. Defendant Malgorzata Zasadny (“Zasadny”) is a licensed physical therapist. Zasadny became the sole owner of Brynwood effective January 1, 2019.

D. On May 3, 2019, Penny McGuire filed a *qui tam* action in the United States District Court for the Northern District of Illinois captioned *United States ex rel. Penny A. McGuire v. Brynwood Myofascial Therapy, LLC, Marla J. Monge, and Malgorzata Zasadny*, No. 19 C 3015 (N.D. Ill.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). The complaint alleges that Zasadny and Monge, the owners of a clinic that provides physical therapy, occupational therapy, and massage therapy services, are and have been engaged in a scheme to defraud the United States. Specifically, the complaint alleges that the Brynwood, Zasadny, and Monge have been falsely submitting claims to Medicare for physical or occupational therapy when in fact the services are being provided by massage therapists or by physical therapy or occupational therapy assistants without the supervision of a physical therapist or occupational therapist.

E. The United States contends that Brynwood, Zasadny, and Monge submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”).

F. The United States contends that it has certain civil claims against Brynwood, Zasadny, and Monge for submitting and/or causing the submission of false claims to Medicare by engaging in the following conduct (hereinafter the “Covered Conduct”) during the period from May 1, 2012, through August 31, 2019:

a. Billing Medicare for physical therapy or occupational therapy services performed by a provider when the provider was out of the country;

b. Billing Medicare for physical therapy or occupational therapy services performed by licensed massage therapists;

c. Billing Medicare for physical therapy services using occupational therapy codes and billing Medicare for occupational therapy services using physical therapy codes to avoid the Medicare cap for those services;

d. Billing Medicare for services performed by an occupational therapy assistant or physical therapy assistant when they were not supervised by a licensed occupational therapist or a licensed physical therapist; and

e. Billing Medicare for occupational and physical therapy when there was no licensed occupational therapist or physical therapist on site.

Collectively, the conduct described in this paragraph is referred to as the “Covered Conduct.”

G. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Brynwood Myofascial Therapy, LLC shall pay the United States \$858,563.10 (eight hundred fifty eight thousand five hundred sixty three dollars and ten cents) (Brynwood Settlement Amount), plus interest at 4% per annum, of which \$429,281.55 is restitution. Malgorzata Zasadny shall pay the United States \$95,395.90 (ninety five thousand three hundred ninety five dollars and ninety five cents) (Zasadny Settlement Amount), of which \$47,697.95 is restitution. The Brynwood and Zasadny Settlement Amounts total \$953,959.00 (Total Settlement Amount). It shall be paid as follows:

a. For payment of the Brynwood Settlement Amount, Brynwood will make a payment to the United States in the amount of \$105,000.00 (one hundred five thousand dollars), no later than 15 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Northern District of Illinois.

i. Over a period of 5 years, Brynwood will pay the remaining \$753,563.10 (seven hundred fifty three thousand five hundred sixty three dollars and ten cents), plus interest at 4% per annum from the entry of the Consent Judgment and Settlement Agreement. Payments will be made on the first of the month, every month, in equal principal amounts plus applicable interest.

ii. Interest shall accrue on the unpaid settlement amount at the rate of 4% per annum.

iii. If Brynwood or any of its affiliates is sold, merged, or transferred, or a significant portion of the assets of Brynwood or of any of its affiliates is sold, merged, or transferred into another non-affiliated entity, Brynwood shall promptly notify the United States, and all remaining payments owed pursuant to the Settlement Agreement shall be accelerated and become immediately due and payable.

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

2. For payment of the Zasadny Settlement Amount, Zasadny will make a payment to the United States in the amount of \$95,395.90 (ninety five thousand three hundred ninety five dollars and ninety cents), no later than 15 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Northern District of Illinois. Defendants Brynwood and Zasadny, in her

individual capacity, shall be jointly and severally liable for their payment obligations described as the Brynwood Settlement Amount and Zasadny Settlement Amount in Paragraph 1 of this Agreement.

3. Conditioned upon the United States receiving the Settlement Amount payments identified in Paragraph 1, the United States agrees that it shall pay to Relator by electronic funds transfer, pursuant to instructions provided by Steven Schneck, Attorney at Law, LLC (Counsel for Relator), 17% percent of each such payment received under the Settlement Agreement (Relator's Share) as soon as feasible after receipt of the payment. The instructions will direct that transfers be made to Steven Schneck, Attorney at Law, LLC's IOLTA Account, which will thereafter be distributed by Counsel for Relator pursuant to Relator's applicable Retainer Agreement.

4. Subject to the exceptions in Paragraph 8 (concerning reserved claims) below, and:

a. Conditioned upon the United States' receipt of the Brynwood Settlement Amount and the Zasadny Settlement Amount, plus interest due under Paragraph 1, and subject to Paragraph 11 (concerning disclosure of assets), Paragraph 22 (concerning default), and Paragraph 25 (concerning bankruptcy) below, the United States releases Zasadny and Brynwood Myofascial Therapy, LLC, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. In addition to the payments to be made under Paragraphs 1 and 3, Brynwood Myofascial Therapy, LLC and Malgorzata Zasadny shall collectively pay Steven Schneck, Attorney at Law, LLC, and Miner, Barnhill & Galland, P.C. (Co-counsel for Relator), a total of

\$115,445 (one hundred fifteen thousand four hundred forty five dollars), as Brynwood and Zasadny's collective share of Relator's reasonable expenses, attorneys' fees and costs pursuant to 31 U.S.C. §3730(d), to be paid as follows:

a. \$36,942 (thirty six thousand nine hundred forty two dollars) shall be paid on January 1, 2024, by electronic funds transfer pursuant to written instructions to be provided by Steven Schneck, Attorney at Law, LLC.

b. Over a period of 3 years, beginning on February 1, 2024 and continuing on the first of every month thereafter through January 1, 2027, Brynwood and Zasadny will pay the remaining \$78,503 (seventy eight thousand five hundred three dollars), plus interest at the statutory rate pursuant to 28 U.S.C. § 1961, by electronic funds transfer pursuant to written instructions to be provided by Steven Schneck, Attorney at Law, LLC. The instructions provided will direct that transfers be made to Steven Schneck, Attorney at Law, LLC's IOLTA Account. Such payments will be made monthly, in 36 equal principal amounts of \$2,180.64 (two thousand one hundred eighty dollars and 64 cents), plus applicable interest. Interest shall accrue on the unpaid settlement amount at the statutory rate pursuant to 28 U.S.C. § 1961, which is the Market Yield on U.S. Treasury Securities at 1-Year Constant Maturity, available at <https://fred.stlouisfed.org/series/DGS1>, and the interest rate with respect to all monthly payments shall be determined as of the Effective Date of this Agreement.

i. Defendants Brynwood and Zasadny, in her individual capacity, shall be jointly and severally liable for their payment obligations described in Paragraph 5 of this Agreement.

ii. If Brynwood or any of its affiliates is sold, merged, or transferred, or a significant portion of the assets of Brynwood or of any of its affiliates is sold, merged, or transferred into another non-affiliated entity, Brynwood shall promptly notify Steven Schneck,

Attorney at Law, LLC, and Miner, Barnhill & Galland, P.C., and all remaining payments owed pursuant to Paragraph 5 shall be accelerated and become immediately due and payable.

iii. Brynwood and Zasadny's share of Relator's reasonable expenses, attorneys' fees and costs pursuant to 31 U.S.C. §3730(d), set forth in Paragraph 5, may be prepaid, in whole or in part, without penalty or premium.

6. Subject to the exceptions in Paragraph 8 below, and subject to Paragraph 11 (concerning disclosure of assets), Paragraph 22 (concerning default), and Paragraph 25 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Defendants from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

7. Subject to the exceptions in Paragraph 8 below, and:

a. Conditioned upon the United States' receipt of the Brynwood Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Brynwood Myofascial Therapy, LLC from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

b. Conditioned upon the United States' receipt of the Zasadny Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Zasadny from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

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

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

- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;

9. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share (set forth in Paragraph 3), Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

10. Subject to the conditions in Paragraphs 1 and 5 of this Agreement, Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Defendants and their officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

11. Defendants have provided sworn financial disclosures and supporting documents (together "Financial Disclosures") to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. Defendants warrant that the Financial Disclosures are complete, accurate, and current as of the

Effective Date of this Agreement. If the United States learns of asset(s) in which Defendants 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 Defendants' obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by Defendants on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$78,465 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Defendants' previously undisclosed assets. Defendants agree not to contest any collection action undertaken by the United States pursuant to this provision, and agree that they will immediately pay the United States 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) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph rescinds this Agreement, Defendants waive and agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Defendants that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement.

12. Relator and Relator's Counsel have accepted and relied on the United States' reliance on the accuracy and completeness of the Financial Disclosures described in Paragraph 11 in reaching this Agreement. If, pursuant to Paragraph 11, the United States (a) rescinds this Agreement and reinstates its suit or files suit based on the Covered Conduct or (b) collects the full

Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Defendants' previously undisclosed assets, Defendants agree not to contest any collection action undertaken by the Relator and/or Relator's Counsel pursuant to this provision, and agree that they will immediately pay Relator and the Relator's Counsel the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, or (ii) Relator's reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to Paragraph 11, rescinds this Agreement, Defendants waive and agree not to plead, argue, or otherwise raise any defenses against Relator and/or Relator's Counsel under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that are filed by Relator and/or Relator's Counsel within 120 calendar days of written notification to Defendants that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement.

13. Defendants waive and shall not assert any defenses Defendants 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.

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

15. Defendants fully and finally release the Relator and Relator's Counsel from any claims (including attorneys' 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 Relator and/or Relator's Counsel, related to the Covered Conduct, the Relator's investigation and prosecution thereof, or to any conduct or alleged conduct by Relator during or related to her employment with Brynwood.

16. Defendants fully and finally release the Relator and Relator's Counsel from any claims (including attorneys' 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 Relator and/or Relator's Counsel, related to the *qui tam* suit and the Relator and Relator's Counsel's investigation and prosecution thereof.

17. The Total Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

18. Defendants agree to the following:

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

1) the matters covered by this Agreement;

- 2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- 3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- 4) the negotiation and performance of this Agreement; and
- 5) the payment(s) Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relator, 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 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 its 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 it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the United States, or any State Medicaid program,

including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendants or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Defendants agree that the United States, 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. The United States reserves its rights to disagree with any calculations submitted by Defendants or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Defendants or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

19. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendants further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of

interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

20. 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 21 (waiver for beneficiaries), below.

21. 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 Covered Conduct.

22. The United States is willing to accept payments over time to satisfy the Brynwood Settlement Amount in compromise of its civil claims arising from the Covered Conduct due solely to Brynwood's and Zasadny's financial condition as reflected in the Financial Disclosures referenced in Paragraph 11.

a. In the event that Brynwood and/or Zasadny fail to pay the Settlement Amounts as provided in the payment schedule set forth in Paragraph 1 above, Brynwood and/or Zasadny shall be in Default of Brynwood's and/or Zasadny's payment obligations ("Default"). The United States will provide a written Notice of Default, and Brynwood and/or Zasadny 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 Brynwood and/or Zasadny, or to such other representative as Brynwood and/or Zasadny shall designate in advance in writing. Notice of Default shall also be delivered to Relator's Counsel. If Brynwood and/or Zasadny fail 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 to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the 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, Brynwood and/or Zasadny agree that the United States, at its sole discretion, may (i) 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 Brynwood and/or Zasadny for the claims that would otherwise be covered by the releases provided in Paragraph 4 above, with any recovery reduced by the amount of any payments previously made by Brynwood and/or Zasadny to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Brynwood and/or Zasadny and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) 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 shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Brynwood and/or Zasadny agrees immediately to pay the United States 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’ reasonable attorneys’ fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, Brynwood and/or Zasadny 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 (i) filed by the United States against Brynwood and/or Zasadny within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement. Brynwood and/or Zasadny agrees not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

c. In the event of Uncured Default, OIG-HHS may exclude Brynwood and/or Zasadny from participating in all Federal health care programs until Brynwood and/or Zasadny pays the Brynwood Settlement Amount and Zasadny Settlement Amount, with interest, as set forth above in Paragraph 1 (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Brynwood and/or Zasadny. Brynwood and/or Zasadny 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, Brynwood and/or Zasadny 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. Brynwood and/or Zasadny 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.

23. Relator and Relator's Counsel are willing to accept payments over time as set forth in Paragraphs 3 and 5 due solely to Brynwood's and Zasadny's financial condition as reflected in the Financial Disclosures that were made to the United States as referenced in Paragraph 11.

a. In the event that Brynwood and/or Zasadny fail to make any or all of the payments as provided in Paragraphs 1 and 5 above, Brynwood and/or Zasadny shall be in Default of Brynwood's and/or Zasadny's payment obligations to Relator ("Default to Relator"). Counsel for Relator will provide a written Notice of Default with respect to payments owed under Paragraph 5, and Brynwood and/or Zasadny shall have an opportunity to cure such Default to Relator's Counsel within seven (7) calendar days from the date of receipt of the Notice of Default to Relator by making the payments due under the payment schedule and paying any additional interest accruing under Paragraph 5 up to the date of payment. Notice of Default to Relator will be delivered to Brynwood and/or Zasadny, or to such other representative as Brynwood and/or Zasadny shall designate in advance in writing. Notice of Default to Relator shall also be delivered to the United States. If Brynwood and/or Zasadny fail to cure the Default to Relator within seven (7) calendar days of receiving the Notice of Default to Relator, the remaining unpaid balance due under Paragraph 5 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 to Relator, on the remaining unpaid total (principal and interest balance).

24. In the event of Uncured Default to Relator, Brynwood and Zasadny agree that Relator and Relator's Counsel, at their sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil or administrative claim, action, or proceeding against Brynwood and/or Zasadny for the claims that would otherwise be covered by the releases provided in Paragraph 10 above, with any recovery reduced by the amount of any payments previously made by Brynwood and/or Zasadny to Relator's Counsel under this Agreement; (ii) take any action to enforce this Agreement in a new action; and/or (iii) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. Relator and Relator's Counsel shall be entitled to any other rights

granted by law or in equity by reason of Default to Relator, including referral of this matter for private collection. In the event Relator and/or Relator's Counsel pursues a collection action, Brynwood and/or Zasadny agrees immediately to pay Relator's Counsel the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) Relator's and/or Relator's Counsel's reasonable attorneys' fees and expenses incurred in such an action. In the event that Relator and/or Relator's Counsel opts to rescind this Agreement pursuant to this paragraph, Brynwood and/or Zasadny waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil claims that are (i) filed by Relator and/or Relator's Counsel against Brynwood and/or Zasadny within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement. Brynwood and/or Zasadny agrees not to contest any offset, recoupment, and /or collection action undertaken by Relator and/or Relator's Counsel pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to Relator and/or Relator's Counsel.

25. In exchange for valuable consideration provided in this Agreement, Defendants and Relator acknowledge the following:

a. Defendants have reviewed their financial situation and warrant that they are 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 of the 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 Defendants, 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 Defendants 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 any of Defendants' payments or 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 Settlement Amount and payment obligations in Paragraph 5 are paid in full, Defendants 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 Defendants' debts, or to adjudicate Defendants as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Defendants or for all or any substantial part of Defendants' assets:

i. the United States 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 Paragraph 4 above;

ii. the United States has an undisputed, noncontingent, and liquidated allowed claim against Brynwood and Zasadny, held jointly and severally, and Monge in the amount of \$2,353,956, less any payments received pursuant to Paragraph 1 of this Agreement, as well as any payments made by Monge pursuant to a separate agreement or order in this same proceeding, provided, however, that such payments are not otherwise avoided and recovered from the United States by Defendants, a receiver, trustee, custodian, or other similar official for Defendants;

iii. if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States shall not be responsible for the return of any amounts already paid by the United States to the Relator;

iv. if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relator pursuant to Paragraph 3 are recovered from the United States 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 Paragraph 1 of this Agreement, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States;

v. Relator and Relator's Counsel 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 Paragraph 10 above; and

vi. Relator and Relator's Counsel have an undisputed, noncontingent, and liquidated allowed claim against Brynwood and Zasadny, held jointly and severally, in the amount of \$115,445, less any payments received pursuant to Paragraph 5 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from Relator and/or Relator's Counsel by Defendants, a receiver, trustee, custodian, or other similar official for Defendants.

f. Defendants agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 25.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' police and regulatory power. Defendants shall not argue or otherwise contend that the United States' 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). Defendants waive 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 within 120 days of written notification to Defendants that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of the Agreement.

26. Upon receipt of the payment(s) described in Paragraphs 1 and 5, 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).

27. Except as otherwise provided with respect to the Defendants' payments of the Relator's reasonable expenses, attorneys' fees and costs under 31 U.S.C. § 3730(d), each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

28. 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.

29. 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 Northern District of Illinois. 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.

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

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

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

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

34. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

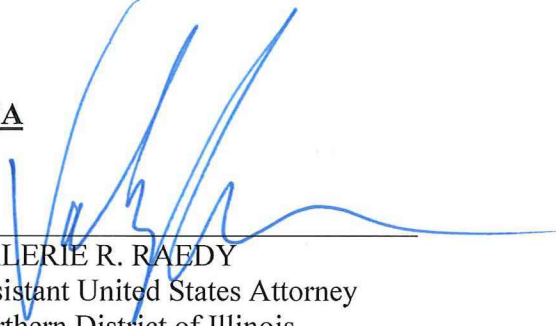
35. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

36. 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

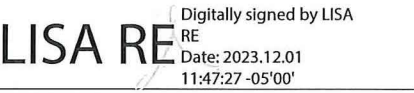
DATED: 12-11-2023

BY:


VALERIE R. RAEDY
Assistant United States Attorney
Northern District of Illinois

DATED: _____

BY:


LISA RE
Digitally signed by LISA RE
Date: 2023.12.01 11:47:27 -05'00'
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

BRYNWOOD MYOFASCIAL THERAPY, LLC - DEFENDANT

DATED: 11/27/23 BY: M. Sosadny
BRYNWOOD MYOFASCIAL THERAPY, LLC


DATED: 11/28/23 BY: Michael I. Sparro
MICHAEL IASPARRO
Counsel for Brynwood Myofascial Therapy, LLC

MALGORZATA ZASADNY - DEFENDANT

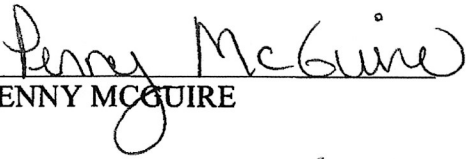
DATED: 11/27/23


BY: 
MALGORZATA ZASADNY

DATED: 11/28/23

BY: 
MICHAEL IASPARRO
Counsel for Malgorzata Zasadny

PENNY MCGUIRE - RELATOR

DATED: 11-19-2023 BY: 
PENNY MCGUIRE

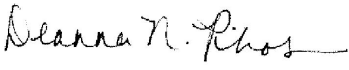
DATED: 11/20/2023 BY: 
STEVEN P. SCHNECK
Counsel for Penny McGuire

DATED: _____ BY: _____
DEANNA N. PIHOS
Counsel for Penny McGuire

PENNY MCGUIRE - RELATOR

DATED: _____ BY: _____
PENNY MCGUIRE

DATED: _____ BY: _____
STEVEN P. SCHNECK
Counsel for Penny McGuire

DATED: 11/17/23 BY: 
DEANNA N. PIHOS
Counsel for Penny McGuire

SO ORDERED, this _____ day of _____, 2023

The Honorable Rebecca R. Pallmeyer
District Court Judge, Chief

Exhibit B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No.
)
 BRYNWOOD MYOFASCIAL THERAPY,) Judge
 LLC, MALGORZATA ZASADNY,)
 individually, and MARLA J. MONGE,)
 individually,)
)
 Defendant.)

CONSENT JUDGMENT AND SETTLEMENT AGREEMENT

This Consent Judgment and 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) (collectively, the “United States”), Marla J. Monge (“Defendant”), and Penny McGuire (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Brynwood Myofascial Therapy, LLC (“Brynwood”) has been in business since at least April 2012, with its office and principal place of business located at 6072 Brynwood Dr., Ste. 102, Rockford, Illinois 61114-5829. Brynwood offers myofascial release therapy described as a hands-on technique that involves applying gentle, sustained pressure into the myofascial connective tissue restrictions to eliminate pain and restore motion.

B. Defendant Marla J. Monge (“Monge”) is a licensed massage therapist. Monge opened Brynwood in 2010 as the sole owner and practitioner. Monge sold her ownership interest in the company effective January 1, 2019.

C. Malgorzata Zasadny (“Zasadny”) is a licensed physical therapist. Zasadny became the sole owner effective January 1, 2019.

D. On May 3, 2019, Penny McGuire filed a *qui tam* action in the United States District Court for the Northern District of Illinois captioned *United States ex rel. Penny A. McGuire v. Brynwood Myofascial Therapy, LLC, Marla J. Monge, and Malgorzata Zasadny*, No. 19 C 3015 (N.D. Ill.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). The complaint alleges that Zasadny and Monge, the owners of a clinic that provides physical therapy, occupational therapy, and massage therapy services, are and have been engaged in a scheme to defraud the United States. Specifically, the complaint alleges that Brynwood, through Zasadny and Monge, have been falsely submitting claims to Medicare for physical or occupational therapy when in fact the services are being provided by massage therapists or by physical therapy or occupational therapy assistants without the supervision of a physical therapist or occupational therapist.

E. The United States contends that Brynwood, Zasadny, and Monge submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”).

F. The United States contends that it has certain civil claims against Brynwood, Zasadny, and Monge for submitting and/or causing the submission of false claims to Medicare by engaging in the following conduct (hereinafter the “Covered Conduct”) during the period from May 1, 2012, through August 31, 2019:

a. Billing Medicare for physical therapy or occupational therapy services performed by a provider when the provider was out of the country;

b. Billing Medicare for physical therapy or occupational therapy services performed by licensed massage therapists;

c. Billing Medicare for physical therapy services using occupational therapy codes and billing Medicare for occupational therapy services using physical therapy codes to avoid the Medicare cap for those services;

d. Billing Medicare for services performed by an occupational therapy assistant or physical therapy assistant when they were not supervised by a licensed occupational therapist or a licensed physical therapist; and

e. Billing Medicare for occupational and physical therapy when there was no licensed occupational therapist or physical therapist on site.

Collectively, the conduct described in this paragraph is referred to as the “Covered Conduct.”

G. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Marla J. Monge shall pay to the United States \$615,345.00 (six hundred fifteen thousand three hundred forty-five dollars) (Monge Settlement Amount), plus interest at 4% per annum from the entry of the Consent Judgment and Settlement Agreement, of which \$307,672.50 is restitution.

2. It shall be paid as follows:

a. For payment of the Monge Settlement Amount, Monge agrees to pay to the United States \$307,672.50 (three hundred seven thousand six hundred seventy two dollars and fifty cents), no later than 15 days after the Effective Date of this Agreement by electronic funds

transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Northern District of Illinois.

i. Over a period of 3 years, Monge will pay the remaining \$307,672.50 (three hundred seven thousand six hundred seventy two dollars and fifty cents), plus interest at 4% per annum from the entry of the Consent Judgment and Settlement Agreement . Payments will be made on the first of the month, every month, in equal principal amounts plus applicable interest.

ii. Interest shall accrue on the unpaid settlement amount at the rate of 4% per annum. Collectively the settlement amount and interest received by the United States shall be referred to as the Settlement Payments.

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

3. Conditioned upon the United States receiving the Settlement Amount payments identified in Paragraphs 1 and 2, the United States agrees that it shall pay to Relator by electronic funds transfer, pursuant to instructions provided by Steven Schneck, Attorney at Law, LLC (Counsel for Relator), 17% percent of each such payment received under the Settlement Agreement (Relator's Share) as soon as feasible after receipt of the payment. The instructions will direct that transfers be made to Steven Schneck, Attorney at Law, LLC's IOLTA Account, which will thereafter be distributed by Counsel for Relator pursuant to Relator's applicable Retainer Agreement.

4. Subject to the exceptions in Paragraph 9 (concerning reserved claims) below, and subject to Paragraph 12 (concerning disclosure of assets), Paragraph 23 (concerning default), and Paragraph 26 (concerning bankruptcy) below, and:

a. Conditioned upon the United States' receipt of the Monge Settlement Amount, plus interest due under Paragraph 1, the United States releases Monge from any civil or

administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. In addition to the payments to be made under Paragraphs 1 and 2, Monge shall pay Steven Schneck, Attorney at Law, LLC, and Miner, Barnhill & Galland, P.C. (Co-counsel for Relator), a total of \$115,445 (one hundred fifteen thousand four hundred forty five dollars), as Monge's collective share of Relator's reasonable expenses, attorneys' fees and costs pursuant to 31 U.S.C. §3730(d), to be paid as follows:

a. \$36,942 (thirty six thousand nine hundred forty two dollars) shall be paid on December 1, 2023 (or 5 days after the Effective Date of this Agreement in the event that the Effective Date of this Agreement is on or after November 28, 2023), by electronic funds transfer pursuant to written instructions to be provided by Steven Schneck, Attorney at Law, LLC.

b. Over a period of 3 years, beginning on January 1, 2024 and continuing on the first of every month thereafter through December 1, 2026, Monge will pay the remaining \$78,503 (seventy eight thousand five hundred three dollars), plus interest at the statutory rate pursuant to 28 U.S.C. § 1961, by electronic funds transfer pursuant to written instructions to be provided by Steven Schneck, Attorney at Law, LLC. The instructions provided will direct that transfers be made to Steven Schneck, Attorney at Law, LLC's IOLTA Account. Such payments will be made monthly, in 36 equal principal amounts of \$2,180.64 (two thousand one hundred eighty dollars and 64 cents), plus applicable interest. Interest shall accrue on the unpaid settlement amount at the statutory rate pursuant to 28 U.S.C. § 1961, which is the Market Yield on U.S. Treasury Securities at 1-Year Constant Maturity, available at <https://fred.stlouisfed.org/series/DGS1>, and

the interest rate with respect to all monthly payments shall be determined as of the Effective Date of this Agreement.

6. Monge's share of Relator's reasonable expenses, attorneys' fees and costs pursuant to 31 U.S.C. §3730(d), set forth in Paragraph 5, may be prepaid, in whole or in part, without penalty or premium.

7. Subject to the exceptions in Paragraph 9 below, and subject to Paragraph 12 (concerning disclosure of assets), Paragraph 23 (concerning default), and Paragraph 26 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Defendant from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

8. Subject to the exceptions in Paragraph 9 below, and:

a. Conditioned upon the United States' receipt of the Monge Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Monge from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

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

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal health care programs;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;

10. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share (set forth in Paragraph 3), Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

11. Subject to the conditions in Paragraphs 1 and 5 of this Agreement, Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Defendant and their officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

12. Defendant has provided sworn financial disclosures and supporting documents (together "Financial Disclosures") to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. Defendant warrants that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States learns of asset(s) in which Defendant 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 Defendant's obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or

misrepresentation by Defendant on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$78,465 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Defendant's previously undisclosed assets. Defendant agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees that it will immediately pay the United States 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) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph rescinds this Agreement, Defendant waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Defendant that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement.

13. Relator and Relator's Counsel have accepted and relied on the United States' reliance on the accuracy and completeness of the Financial Disclosures described in Paragraph 12 in reaching this Agreement. If, pursuant to Paragraph 12, the United States (a) rescinds this Agreement and reinstates its suit or files suit based on the Covered Conduct or (b) collects the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Defendant's previously undisclosed assets, Defendant agrees not to contest any collection action undertaken by the Relator and/or Relator's Counsel pursuant to this provision, and agrees that she will immediately pay Relator and the Relator's Counsel the greater of (i) a ten-percent

(10%) surcharge of the amount collected in the collection action, or (ii) Relator's reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to Paragraph 12, rescinds this Agreement, Defendant waives and agrees not to plead, argue, or otherwise raise any defenses against Relator and/or Relator's Counsel under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that are filed by Relator and/or Relator's Counsel within 120 calendar days of written notification to Defendant that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement.

14. Defendant waives and shall not assert any defenses Defendant 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.

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

16. Defendant fully and finally releases the Relator and Relator's Counsel from any claims (including attorneys' 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 Relator and/or Relator's Counsel, related to the Covered Conduct and the Relator and Relator's Counsel's

investigation and prosecution thereof, or to any conduct or alleged conduct by Relator during or related to her employment with Brynwood.

17. Defendant fully and finally releases the Relator and Relator's Counsel from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendant have asserted, could have asserted, or may assert in the future against the Relator and/or Relator's Counsel, related to the *qui tam* suit and the Relator's investigation and prosecution thereof.

18. The Monge Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Defendant agree not to resubmit to any Medicare contractor or any state payer 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.

19. Defendant 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 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendant, its present or former officers, directors, employees, shareholders, and agents in connection with:

- 1) the matters covered by this Agreement;
- 2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- 3) Defendant's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in

connection with the matters covered by this Agreement (including attorneys' fees);

- 4) the negotiation and performance of this Agreement; and
- 5) the payment(s) Defendant makes to the United States pursuant to this Agreement and any payments that Defendant may make to Relator, 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 Defendant, and Defendant shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Defendant or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendant further agrees that within 90 days of the Effective Date of this Agreement it 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 Defendant 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. Defendant agrees that the United States, at a minimum, shall be entitled to recoup from Defendant any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendant or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Defendant or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

20. Defendant agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendant shall encourage, and agree not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendant further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

21. 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 22 (waiver for beneficiaries), below.

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

23. The United States is willing to accept payments over time to satisfy the Monge Settlement Amount in compromise of its civil claims arising from the Covered Conduct due solely to Monge's financial condition as reflected in the Financial Disclosures referenced in Paragraph 12.

a. In the event that Monge fails to pay the Settlement Amounts as provided in the payment schedule set forth in Paragraphs 1 and 2 above, Monge shall be in Default of Monge's payment obligations ("Default"). The United States will provide a written Notice of Default, and Monge 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 Monge, or to such other representative as Monge shall designate in advance in writing. Notice of Default shall also be delivered to Relator's Counsel. If Monge fail 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 to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the 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, Monge agree that the United States, at its sole discretion, may (i) 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 Monge for the claims that would otherwise be covered by the releases provided in Paragraph 4 above, with any recovery reduced by the amount of any payments previously made by Monge to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Monge and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) 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 shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Monge agrees immediately to pay the United States 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' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, Monge 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 (i) filed by the United States against Monge within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement. Monge agrees not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph, either

administratively or in any state or federal court, except on the grounds of actual payment to the United States.

c. In the event of Uncured Default, OIG-HHS may exclude Monge from participating in all Federal health care programs until Monge pays the Monge Settlement Amount, with interest, as set forth above in Paragraph 1 (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Monge. Monge 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, Monge wishes to apply for reinstatement, she must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Monge 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.

24. Relator and Relator's Counsel are willing to accept payments over time as set forth in Paragraphs 3 and 5 due solely to Monge's financial condition as reflected in the Financial Disclosures that were made to the United States as referenced in Paragraph 12.

a. In the event that Monge fails to make any or all of the payments as provided in Paragraphs 1, 2 and 5 above, Monge shall be in Default of Monge's payment obligations to Relator ("Default to Relator"). Counsel for Relator will provide a written Notice of Default with respect to payments owed under Paragraph 5, and Monge shall have an opportunity to cure such Default to Relator's Counsel within seven (7) calendar days from the date of receipt of the Notice of Default to Relator by making the payments due under the payment schedule and paying any additional interest accruing under Paragraph 5 up to the date of payment. Notice of Default to Relator will be delivered to Monge, or to such other representative as Monge shall designate in

advance in writing. Notice of Default to Relator shall also be delivered to the United States. If Monge fails to cure the Default to Relator within seven (7) calendar days of receiving the Notice of Default to Relator, the remaining unpaid balance due under Paragraph 5 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 to Relator, on the remaining unpaid total (principal and interest balance).

25. In the event of Uncured Default to Relator, Monge agrees that Relator and Relator's Counsel, at their sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil or administrative claim, action, or proceeding against Monge for the claims that would otherwise be covered by the releases provided in Paragraph 11 above; (ii) take any action to enforce this Agreement in a new action; and/or (iii) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. Relator and Relator's Counsel shall be entitled to any other rights granted by law or in equity by reason of Default to Relator, including referral of this matter for private collection. In the event Relator and/or Relator's Counsel pursues a collection action, Monge agrees immediately to pay Relator's Counsel the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) Relator's and/or Relator's Counsel's reasonable attorneys' fees and expenses incurred in such an action. In the event that Relator and/or Relator's Counsel opts to rescind this Agreement pursuant to this paragraph, Monge waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil claims that are (i) filed by Relator and/or Relator's Counsel against Monge within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement. Monge agrees not to contest any

offset, recoupment, and /or collection action undertaken by Relator and/or Relator's Counsel pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to Relator and/or Relator's Counsel.

26. In exchange for valuable consideration provided in this Agreement, Defendant and Relator acknowledge the following:

a. Defendant has reviewed their financial situation and warrants that they are 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 of the 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 Defendant, 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 Defendant 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 any of Defendant's payments or 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 Settlement Amount and payment obligations in Paragraph 5 are paid in full, Defendant 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 Defendant's debts, or to adjudicate Defendant as bankrupt or

insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant or for all or any substantial part of Defendant's assets:

i. the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the releases provided in Paragraph 4 above;

ii. the United States has an undisputed, noncontingent, and liquidated allowed claim against Monge in the amount of \$1,846,035, less any payments received pursuant to Paragraph 1 of this Agreement, as well as any payments made by Brynwood and Zasadny pursuant to a separate agreement or order in the same proceeding, provided, however, that such payments are not otherwise avoided and recovered from the United States by Defendant, a receiver, trustee, custodian, or other similar official for Defendant;

iii. if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States shall not be responsible for the return of any amounts already paid by the United States to the Relator;

iv. if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relator pursuant to Paragraph 3 are recovered from the United States 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 Paragraph 1 of this Agreement, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States.

v. Relator and Relator's Counsel may rescind the release in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the release provided in Paragraph 11 above; and

vi. Relator and Relator's Counsel have an undisputed, noncontingent, and liquidated allowed claim against Monge, in the amount of \$115,445, less any payments received pursuant to Paragraph 5 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from Relator and/or Relator's Counsel by Defendant, a receiver, trustee, custodian, or other similar official for Defendant.

f. Defendant agrees that any civil and/or administrative claim, action, or proceeding brought by the United States 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' police and regulatory power. Defendant shall not argue or otherwise contend that the United States' 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). Defendant 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 within 120 days of written notification to Defendant that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of the Agreement.

27. Upon receipt of the payment(s) described in Paragraphs 1 and 5, 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).

28. Except as otherwise provided with respect to the Defendant's payments of the Relator's reasonable expenses, attorneys' fees and costs under 31 U.S.C. § 3730(d), each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

29. 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.

30. 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 Northern District of Illinois. 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.

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

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

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

34. This Agreement is binding on Defendant's successors, transferees, heirs, and assigns.

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

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

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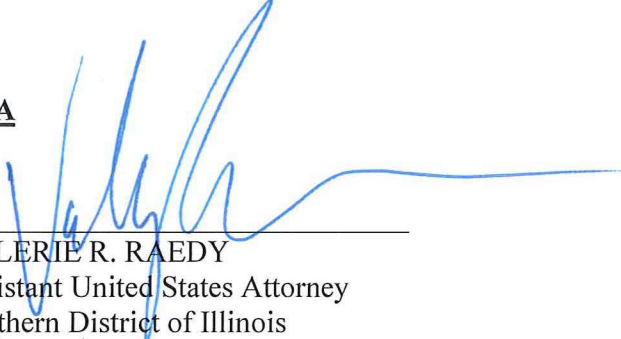
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37. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of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

THE UNITED STATES OF AMERICA

DATED: 12-11-2023

BY:



VALERIE R. RAEDY
Assistant United States Attorney
Northern District of Illinois

DATED: _____

BY:

LISA RE Digitally signed by LISA RE
Date: 2023.12.01 11:38:18
-05'00'

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


MARLA J. MONGE - DEFENDANT

DATED: 11/21/2023 BY: Marla J. Monge
MARLA J. MONGE

DATED: 11/21/2023 BY: Jim Zuba
JIM ZUBA
Counsel for Marla J. Monge

PENNY MCGUIRE - RELATOR

DATED: 11-19-2023 BY: Penny McGuire
PENNY MCGUIRE

DATED: 11/20/2023 BY: 
~~STEVEN P. SCHNECK~~
Counsel for Penny McGuire

DATED: _____ BY: _____
DEANNA N. PIHOS
Counsel for Penny McGuire

PENNY MCGUIRE - RELATOR

DATED: _____ BY: _____
PENNY MCGUIRE

DATED: _____ BY: _____
STEVEN P. SCHNECK
Counsel for Penny McGuire

DATED: 11/17/23 BY: *Deanna N. Pihos*
DEANNA N. PIHOS
Counsel for Penny McGuire

SO ORDERED, this _____ day of _____, 2023

The Honorable Rebecca R. Pallmeyer
District Court Judge, Chief