

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice, the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS), and 149 Ballston Ave LLC, Ballston Two, LLC, and Leon Melohn (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. 149 Ballston Ave LLC (“149 Ballston”) is a limited liability company organized under the laws of the State of New York. Ballston Two, LLC (“Ballston Two”) is a limited liability company organized under the laws of the State of New York. Leon Melohn is an individual residing in New York, and is the managing and controlling member of 149 Ballston and Ballston Two, which are owned by a trust in which Melohn is a trustee. Leon Melohn, 149 Ballston and Ballston Two will hereafter be collectively referred to as the “Settling Parties.”

B. The United States contends that the Settling Parties caused to be submitted claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

C. The United States contends that the Settling Parties knowingly caused to be presented false and fraudulent claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5, in violation of the federal False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, and common law and that it has certain civil claims under the FCA and common law against the Settling Parties arising from the Covered Conduct defined below.

D. The conduct described in paragraphs E through O below is referred to hereinafter as the “Covered Conduct.”

E. In December 2013, 149 Ballston agreed to purchase the real estate associated with a nursing home being sold by Saratoga County, located at 149 Ballston Ave, Ballston Spa, New

York (“the Nursing Home”). 149 Ballston intended for Saratoga Center for Care LLC (“Saratoga Center”), a New York limited liability company, to operate the Nursing Home and pay rent to 149 Ballston pursuant to a lease.

F. In May 2014, LNH, LLC (“LNH”), an entity affiliated with 149 Ballston, entered into a “Revolving Credit and Security Agreement” to advance funds to the individuals who owned Saratoga Center to provide working capital at nursing homes those individuals intended to operate, including Saratoga Center.

G. In New York, a potential operator of any nursing home must apply for, and be granted, a license from the New York State Public Health and Health Planning Council (“PHHPC”), prior to operating that nursing home. In December 2014, PHHPC granted Saratoga Center the license, and in February 2015, its owners assumed responsibility for the Nursing Home’s operations. Saratoga Center’s owners became the “governing body” and thus had the non-delegable authority to: (1) hire and fire key management employees; (2) maintain books and records; (3) dispose of the Nursing Home’s assets and incur liabilities on its behalf; and (4) adopt and enforce policies regarding the Nursing Home’s operations. 10 NYCRR § 600.9. Saratoga Center also applied for and was granted permission to participate in government health insurance programs, including Medicaid.

H. By 2016, however, Saratoga Center’s owners defaulted on the Revolving Credit and Security Agreement and owed millions of dollars to LNH. Saratoga Center also owed back rent to 149 Ballston. LNH sued Saratoga Center’s owners individually to collect the money owed on the Revolving Credit and Security Agreement. To resolve the lawsuit, LNH and Saratoga Center’s owners entered into a Forbearance Agreement. Pursuant to the agreement, LNH forewent collecting on the debt in exchange for Saratoga Center’s owners transitioning the Nursing Home’s operations to a designee of LNH.

I. Around late 2016 or early 2017, 149 Ballston assigned its interest in the real property to Ballston Two.

J. In early 2017, individuals and entities affiliated with 149 Ballston and Ballston Two identified Saratoga Care and Rehabilitation Center (“SCRC”), an entity affiliated with Skyline Management Group LLC (“Skyline”), as the designee to which the Nursing Home’s operations were to be transitioned. Consistent with its obligations under the Forbearance Agreement, in February 2017, Saratoga Center entered into an Asset Purchase Agreement and a Consulting Agreement with SCRC. Pursuant to the Asset Purchase Agreement, SCRC was to submit an application to the New York State Department of Health (“NYSDOH”) for approval to operate the Nursing Home, and SCRC’s acquisition of the Nursing Home’s assets was conditioned on SCRC obtaining such approval. Pursuant to the Consulting Agreement and pending approval of SCRC to operate the Nursing Home, SCRC was only to assist Saratoga Center by providing certain consulting and administrative services for the Nursing Home.

K. The owners of Saratoga Center, however, relinquished control over the operation of the Nursing Home to SCRC, Skyline, and, later, Chaim “Muttu” Scheinbaum, to include managing the finances and books and records, hiring and firing high-level personnel, and enacting policies—all duties that are non-delegable under New York State law.

L. In April 2018, Skyline ceased operating, and SCRC then partnered with Scheinbaum’s company (collectively “Scheinbaum”) to operate the Nursing Home. Scheinbaum assumed the non-delegable duties described above and continued to operate the Nursing Home until it closed in February 2021. NYSDOH never approved SCRC, Skyline, Scheinbaum, or any other entity or individual, to operate the Nursing Home.

M. During the time when SCRC, Skyline, and Scheinbaum operated the Nursing Home, NYSDOH cited the Nursing Home for deficient resident care. According to multiple inspections,

NYSDOH determined the Nursing Home violated the regulations requiring the facility to be administered in a manner that enables it to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. Specifically, NYSDOH cited the Nursing Home for failing to: ensure that residents were free of any significant medication errors; prevent unnecessary falls and injuries; provide sufficient staffing; prevent the development of pressure ulcers; adequately treat pressure ulcers; and maintain appropriate pest control. In addition, NYSDOH found that these conditions placed the residents' health and safety in immediate jeopardy.

N. In March 2019, the Nursing Home was placed on the Center for Medicare Services' Special Focus Facilities ("SFF") list. The SFF list represents the facilities in each state that received the highest number of deficiency citations and/or whose deficiency citations were greater in scope or severity as compared to other facilities in the same state.

O. The Government contends that the Settling Parties required Saratoga Center's governing body to relinquish its lawful position as the operator of the Nursing Home, and installed unlicensed operators who oversaw the provision of worthless services. The Government further posits that the Settling Parties caused the submission of false and fraudulent claims from February 17, 2017, to March 2018 when Saratoga was operated by SCRC and Skyline, and from March 2018 to February 2021 when Saratoga was operated by SCRC and Scheinbaum.

P. The Settling Parties admit and acknowledge the conduct described in Paragraphs E through N.

Q. This Settlement Agreement is neither an admission of liability by the Settling Parties, nor a concession by the United States that its claims are not well-founded.

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. The Settling Parties shall pay to the United States and the State of New York, a total of \$4,750,000 (“Total Settlement Amount”). Of the Total Settlement Amount, the Settling Parties shall pay to the United States \$1,900,000.00 (“Federal Settlement Amount”), of which \$950,000 is restitution, no later than 14 days after the Effective Date of this Agreement as defined in paragraph 19 by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Northern District of New York.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and upon the United States’ receipt of the Federal Settlement Amount, the United States releases the Settling Parties, together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; affiliated companies; current or former corporate owners; and the corporate successors and assigns of any of them, 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.

3. Notwithstanding the release given in Paragraph 2 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 permissive and mandatory 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; and
- f. Any liability of individuals or entities other than as expressly released herein.

4. VOLUNTARY EXCLUSION

- a. In compromise and settlement of the rights of OIG-HHS to exclude 149 Ballston and Ballston Two pursuant to 42 U.S.C. §§ 1320a-7(b)(7) and 1320a-7(b)(6)(B), based upon the Covered Conduct, 149 Ballston and Ballston Two agree to be excluded under this statutory provision from Medicare, Medicaid, and all other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f), for a period of 10 years. The exclusion shall be effective upon the Effective Date of this Agreement.
- b. Such exclusion shall have national effect. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by 149 Ballston and Ballston Two in any capacity while 149 Ballston and Ballston Two are excluded. This payment prohibition applies to 149 Ballston and Ballston Two and all other individuals and entities (including, for example, anyone who employs or contracts with 149 Ballston and Ballston Two, and any hospital or other provider where 149 Ballston and Ballston Two provide services). The exclusion applies regardless of who submits the claim or other request for payment. Violation of the conditions of the

exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. 149 Ballston and Ballston Two further agree to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion. 149 Ballston and Ballston Two waive any further notice of the exclusion and agree not to contest such exclusion either administratively or in any state or federal court.

- c. Reinstatement to program participation is not automatic. If 149 Ballston or Ballston Two wish to be reinstated, the requesting entity must submit a written request for reinstatement to the OIG in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Such request may be made to the OIG no earlier than 90 days prior to the expiration of the 10 year period of exclusion. Reinstatement becomes effective upon application by 149 Ballston or Ballston Two, approval of the application by the OIG, and notice of reinstatement by the OIG. Obtaining another license, moving to another state, or obtaining a provider number from a Medicare contractor, a state agency, or a Federal health care program does not reinstate 149 Ballston or Ballston Two's eligibility to participate in these programs.

5. The Settling Parties waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment

of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

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

7. 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, carrier) or any state payer, related to the Covered Conduct; and the Settling Parties 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.

8. The Settling Parties 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 the Settling Parties, their present or former officers, directors, employees, shareholders, and agents in connection with:
 - (1) the matters covered by this Agreement;
 - (2) the United States' civil investigation of the matters covered by this Agreement;

- (3) The Settling Parties' investigation, defense, and corrective actions undertaken in response to the United States' civil investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment the Settling Parties make to the United States pursuant to this Agreement.

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 the Settling Parties, and the Settling Parties 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 the Settling Parties or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: the Settling Parties further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare 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 by the Settling Parties 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 the Settling Parties or any of

their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs.

The Settling Parties agree that the United States, at a minimum, shall be entitled to recoup from the Settling Parties 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 by the Settling Parties.

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 the Settling Parties or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on the Settling Parties or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

9. 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 as expressly set forth herein or to the extent provided for in Paragraph 10 (waiver for beneficiaries paragraph), below.

10. The Settling Parties 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.

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

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

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

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

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

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

17. This Agreement is binding on the Settling Parties' successors, transferees, heirs, and assigns.


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

19. 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.

FOR THE UNITED STATES OF AMERICA


CARLA B. FREEDMAN
United States Attorney
Northern District of New York

DATED: February 27, 2023



CHRISTOPHER R. MORAN
Assistant United States Attorney

DATED: 2/17/2023



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

FOR LEON MELOHN, 149 BALLSTON AVE LLC, and BALLSTON TWO LLC

DATED: _____

LEON MELOHN, individually and as
Manager

MICHAEL TREMONTE
Sher Tremonte LLP

ROBERT J. ANELLO
CHRISTOPHER B. HARWOOD
Morvillo Abramowitz Grand Iason & Anello PC

DATED: _____

DATED: _____

FOR THE UNITED STATES OF AMERICA

CARLA B. FREEDMAN
United States Attorney
Northern District of New York

DATED: _____

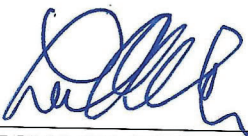
CHRISTOPHER R. MORAN
Assistant United States Attorney

DATED: _____

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

FOR LEON MELOHN, 149 BALLSTON AVE LLC, and BALLSTON TWO LLC


DATED: 2/21/23



LEON MELOHN, individually and as
Manager



MICHAEL TREMONTE
Sher Tremonte LLP



ROBERT J. ANELLO
CHRISTOPHER B. HARWOOD
Morvillo Abramowitz Grand Iason & Anello PC

DATED: 2/27/23

DATED: 2/27/23