

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA and STATE
OF NEW YORK *ex rel.* NICHOLS,

Plaintiffs,

v.

COMPUTER SCIENCES CORPORATION and
CITY OF NEW YORK,

Defendants.

12 Civ. 1750 (JSR)(DCF)

**STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL AS TO
DEFENDANT COMPUTER SCIENCES CORPORATION**

A. WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiffs the United States of America (the “United States” or “Government”), by its attorney, Audrey Strauss, the Acting United States Attorney for the Southern District of New York, and the State of New York (the “State” or “NYS”), by its attorney, Letitia James, Attorney General for the State of New York; the Relator, Oma Nichols, as personal representative of the Estate of Vincent Forcier (the “Relator”),¹ by her authorized representatives; and defendant Computer Sciences Corporation (“CSC,” and together with the Government, the State, and Relator, the “Settling Parties”), by its authorized representatives;

B. WHEREAS, on or about March 10, 2012, Vincent Forcier, who was at the time the relator in the case, initiated this case by filing a complaint under the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, against CSC and its co-defendant the City of New York (the “City”);

¹ This case was initiated by the late Vincent Forcier, who passed away in 2019. Mr. Forcier’s Estate was then substituted for Mr. Forcier as the Relator in the action. Ms. Oma Nichols is the representative of Mr. Forcier’s Estate.

C. WHEREAS, on December 12, 2014, Vincent Forcier filed a second amended complaint (the “Relator Complaint”) alleging, *inter alia*, that CSC and the City violated the FCA, and CSC violated the New York False Claims Act, N.Y. State Fin. L. § 190(2), in connection with submitting claims to New York’s Medicaid program (“NY-Medicaid”) for payment of early intervention program services (“EIP services”);

D. WHEREAS, in September 2014, the Government and the State intervened in this case and, on October 27, 2014, filed their respective complaints-in-intervention;

E. WHEREAS, the City and CSC moved to dismiss the Government’s and the State’s initial complaints-in-intervention as well as the Relator Complaint, and the Government, the State, and Relator opposed those motions;

F. WHEREAS, on April 28, 2016, the Court issued a memorandum and order, granting in part and denying in part defendants’ motions to dismiss;

G. WHEREAS, on September 6, 2016, the Government filed an amended complaint (the “Amended US Complaint”) to add a claim solely against CSC, which alleged that CSC violated federal and state regulations prohibiting incentive payment arrangements for billing agents and fraudulently induced NY-Medicaid to enroll it as a Medicaid provider; the conduct alleged in the Amended US Complaint, along with the conduct alleged in the Amended NYS Complaint defined below, comprise the “Covered Conduct” for purposes of this Stipulation;

H. WHEREAS, on September 6, 2016, the State also filed an amended complaint (the “Amended NYS Complaint”) to assert an additional claim against CSC relating to its incentive compensation arrangement with the City;

I. WHERAS, on January 9, 2018, CSC answered the Amended US Complaint and the Amended NYS Complaint and asserted a counter-claim against the State;

J. WHEREAS, on January 30, 2018, the State moved to dismiss CSC’s counter-claim;

K. WHEREAS, on September 20, 2018, the Court issued a memorandum and order, granting in part and denying in part the State's motion to dismiss CSC's counter-claim;

L. WHEREAS, the Settling Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against CSC in the Amended US Complaint, the Amended NYS Complaint, and the Relator Complaint, for the Covered Conduct, as well as for the counter-claim that CSC asserted against the State;

NOW, THEREFORE, upon the Settling Parties' agreement, IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Settling Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court's exercise of personal jurisdiction over each of them.
2. CSC admits, acknowledges and accepts responsibility for the following conduct:
 - a. During the time period of the Covered Conduct (the "Covered Period"), the City, through its Department of Health and Mental Hygiene ("DOHMH"), was responsible for the provision of EIP services to eligible children in New York City, including preparing individualized family service plans, contracting with and paying treating providers such as audiologists and speech therapists who delivered EIP services, and seeking reimbursement for the EIP services provided to eligible children.
 - b. In 2005, the City issued a request for proposal ("RFP") seeking a new fiscal agent for its EI program, and a corporate predecessor of a CSC subsidiary applied to be the City's fiscal agent in response to that RFP.
 - c. Funding for EIP services provided to eligible children in New York City was potentially available from, among other sources, private insurance, NY-Medicaid, and the EIP funds administered by the New York State Department of Health ("SDOH-EIP Funds").
 - d. Throughout the Covered Period, 18 N.Y.C.R.R. § 540.6(e)(3)(v) mandated that providers shall take "reasonable measures necessary to assure that no claims are submitted to [NY-Medicaid] that could be submitted to another source of reimbursement."
 - e. From 2005 to 2007, CSC engaged in discussions with DOHMH about the City's expectations for CSC as the EIP fiscal agent. During those discussions, DOHMH

advised CSC that when seeking reimbursement on behalf of the City for EIP services for an eligible child who had health coverage from both private insurance and Medicaid (“dual-eligible EIP beneficiary”), the sequence of billing was to be: 1) private insurance; 2) NY-Medicaid; and 3) the SDOH-EIP Funds.

- f. In September 2007, CSC signed a fiscal agent contract with the City. Under this contract, CSC assumed responsibility for developing systems and computer programs for the City to submit EIP claims to different funding sources on behalf of the City in compliance with applicable statutes, rules, and regulations.² On the other hand, CSC did not assume contractual responsibility to directly respond to inquiries from private insurers concerning EIP claims or to directly contact private insurers concerning delays in adjudicating EIP claims.
- g. CSC developed systems and computer programs for the City pursuant to that contract. However, when CSC launched its system for submitting EIP claims to NY-Medicaid on behalf of the City in fall 2008, CSC was not yet ready to submit EIP claims to private insurers for dual-eligible EIP beneficiaries. In March 2009, CSC began submitting claims to private insurance on behalf of the City for dual-eligible EIP beneficiaries. As a result of that delay, private insurers denied as untimely a number of such claims, which were then submitted to NY-Medicaid with information indicating that they had been denied as untimely by private insurers. NY-Medicaid, in turn, accepted and paid those claims.
- h. In 2007, the City informed CSC that DOHMH had created a “Revenue Maximization Unit” for the EI program (the “RMU”), which would seek to maximize fund recovery from potential funding sources, including, specifically, to conduct follow-up on EIP claims that had been denied by NY-Medicaid, private insurers, or the SDOH-EIP Funds.
- i. To allow the RMU to determine which claim denials needed follow-up research or investigation, CSC provided a computer portal, or a “Gateway,” for the RMU’s use. DOHMH later instructed CSC to resubmit certain of these claims to private insurers based on additional information gathered by the RMU.³ CSC did not inquire with DOHMH regarding whether the RMU had a repository or database for tracking or maintaining information regarding its investigations into denied claims. Further, CSC did not receive information from DOHMH on a systematic basis regarding how many claim denials the RMU had investigated or which claims it was unable to investigate due to volume or missing records.
- j. From 2009 to 2012, CSC provided reports to DOHMH regarding instances where

² As fiscal agent for the City, CSC was paid by the City for its services and was not paid by any of the funding sources for EIP services, including NY-Medicaid.

³ When a private insurer paid part or all of a claim for EIP service after that claim had been paid by NY-Medicaid, CSC would submit a correction claim to NY-Medicaid on behalf of the City to reimburse Medicaid.

there had been no responses from private insurers for EIP claims involving dual-eligible EIP beneficiaries.⁴ While DOHMH advised CSC that RMU had contacted private insurers regarding their lack of response to certain claims, CSC did not receive information from DOHMH on a systematic basis regarding how many of those non-responses had been investigated by the RMU or which non-responses the RMU was unable to investigate due to volume or missing records.

- k. In or about September 2010, CSC and DOHMH discussed a plan to develop a procedure for designating claims as “denied” in CSC’s internal EIP database once those claims had been pending with private insurers for 90 days without an adjudication. DOHMH approved that plan, and CSC proceeded to populate the claims that had received no response from private insurers after 90 days with the “denial” designation in the CSC claims database.⁵
- l. CSC also obtained permission from DOHMH to submit those claims to NY-Medicaid with the “0Fill” modifier — which, according to NY-Medicaid’s 837 Institutional Healthcare Claim Supplemental Companion Guide, was to be used either for “when it is known that the primary payer or any other payer prior to Medicaid[] does not cover the services and so will not pay any amount towards the claim,” or for claims that “have been denied (the services were not covered) or were paid zero (the entire charge was adjusted, for example, applied to deductible) by any prior payer.”
- m. As result of the foregoing, the City received payments from NY-Medicaid for EIP claims that NY-Medicaid would not otherwise have made pursuant to its payment regulations and procedures.

3. CSC shall pay \$1,850,000.00 (the “Settlement Amount”) in total to the Government and the State, of which \$925,000.00 constitutes restitution for purposes of the Internal Revenue Code. More specifically:

- a. Within fifteen (15) business days of the Effective Date (as defined below in Paragraph 34 below), CSC shall pay \$860,435.00 (the “US Share”) to the Government in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of New York.

⁴ During the Covered Period, New York law required private health insurers to adjudicate claims within 30 or 45 days depending on the relevant circumstances.

⁵ In their discussions, CSC and DOHMH technical personnel referred to this procedure as providing “dummy denial records.” In 2011, CSC and the City agreed to continue this procedure, but with the 90-day period extended to 120 days.

b. Within fifteen (15) business days of the Effective Date, CSC shall pay \$989,565.00 (the “NYS Share”) to the State by wiring that sum, by electronic fund transfer, to the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“NY-MFCU”) in accordance with instructions provided by NY-MFCU.

4. CSC agrees to cooperate fully and truthfully with the Government’s investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, CSC shall encourage, and agrees 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. CSC further agrees to furnish to the Government, upon request, complete and un-redacted 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.

5. Subject to the exceptions in Paragraphs 6 and 21 below (concerning excluded claims and bankruptcy proceedings), and conditioned upon CSC’s full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the Government and the State pursuant to Paragraph 3 above, the United States releases CSC together with its current and former parent corporations; direct and indirect subsidiaries; brother and sister corporations, divisions; current or former corporate owners and predecessors; and the successors and assigns of any of them (the “CSC Released Parties”), from any civil or administrative monetary claim that the United States has for the Covered Conduct under the FCA, 31 U.S.C § 3729 *et seq.*, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812, and the common law theories of fraud, payment by mistake, and unjust enrichment.

For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of CSC from liability of any kind.

6. Notwithstanding the releases given in Paragraph 5 above, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any administrative liability, including but not limited to the mandatory or permissive exclusion from Federal health care programs (as defined in 42 U.S.C. §1320a-7b(f)) under 42 U.S.C. §1320a-7(a) (mandatory exclusion) or 42 U.S.C. §1320a-7(b) (permissive exclusion);
- 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 Stipulation; and
- f. any liability of individuals.

7. Subject to the exceptions in Paragraph 8 below (concerning excluded claims), in consideration of CSC's obligations as set forth in this Stipulation, conditioned upon CSC's payment of the Settlement Amount to the Government and the State, and subject to Paragraph 20 below (concerning bankruptcy proceedings), the State agrees to release the CSC Released Parties from any civil monetary claim for the Covered Conduct that the State has or may have against the CSC Released Parties under the New York FCA, N.Y. State Fin. L. § 189 et seq., N.Y. Exec. Law § 63(12), N.Y. Soc. Serv. L. § 145-b, or any other state law, or common law or equity, including common law theories of fraud, payment by mistake, or unjust enrichment.

8. Notwithstanding the release agreed to by the State in Paragraph 7 above, the following claims of the State are specifically reserved and excluded from the scope and terms of this Stipulation:

- a. Any civil, criminal or administrative liability arising under New York Tax Law;
- b. Any civil liability that CSC has or may have under any state statute, regulation, or rule not covered by this Stipulation;
- c. Any criminal liability;
- d. Any administrative liability, including mandatory or permissive exclusion from NY-Medicaid;
- e. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of good and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal or property damage or for other consequential damage arising from the Covered Conduct;
- i. Any liability based upon obligations created by this Stipulation; and
- j. Any liability of individuals.

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

10. Conditioned on CSC's timely payment of the full Settlement Amount pursuant to Paragraph 3 above, Relator, Oma Nichols, as personal representative of the Estate of Vincent

Forcier, and the Estate's heirs, successors, attorneys, agents and assigns, as well as any other person or entity acting on the Estate's behalf, release the CSC Released Parties, as well as all of their current and former officers, directors, trustees, shareholders, employees, executives, attorneys, and other agents, and the successors and assigns of any of them, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description (with the exception of the claims set forth in the final sentence of this Paragraph) that the Estate of Vincent Forcier has or may have, whether known or unknown, related to or arising from the Relator Complaint or the Covered Conduct. Nothing in this Stipulation shall release or otherwise waive Relator's claims against the CSC Released Parties for reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d) and the New York False Claims Act, N.Y. Fin. L. § 187 et seq.

11. In consideration of the execution of this Stipulation by Relator and Relator's release as set forth in Paragraph 10 above, CSC, including its subsidiaries, predecessors, and corporate successors and assigns, as well as all of its current and former officers, directors, employees, attorneys, and other agents, release the Relator and her successors, heirs, assigns, attorneys, and other agents, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that CSC has against Relator related to or arising from the Relator Complaint.

12. CSC shall be in default of this Stipulation if CSC fails to make the required payment set forth in Paragraph 3 above on or before the due date for such payment, or if it fails to comply materially with any other term of this Stipulation that applies to it ("Default"). The Government shall provide written notice to CSC of any Default in the manner set forth in Paragraph 26 below. CSC shall then have an opportunity to cure the Default within ten (10) calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within ten (10) calendar days of the delivery of the notice of Default ("Uncured Default"), interest shall accrue at

the rate of 12% per annum compounded daily on the remaining unpaid principal balance of the Settlement Amount, beginning ten (10) calendar days after mailing of the notice of Default. In the event of an Uncured Default, CSC shall agree to the entry of a consent judgment in favor of the United States against CSC in the amount of the Settlement Amount as attached hereto as Exhibit A. In the event of an Uncured Default, the United States may also, at its option, (a) rescind this Stipulation and reinstate the claims asserted against CSC in the Government Complaint; (b) seek specific performance of this Stipulation; (c) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing CSC by any department, agency, or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. CSC shall not contest any offset imposed or any collection undertaken by the Government pursuant to this Paragraph, either administratively or in any Federal or State court. In addition, CSC shall pay the Government all reasonable costs of collection and enforcement under this Paragraph, including attorneys' fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this Paragraph, CSC shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct.

13. CSC, having truthfully admitted to the conduct set forth in paragraph 2 hereof (the "Admitted Conduct"), agrees it shall not, through its attorneys, agents, officers, or employees, make any public statement, including but not limited to, any statement in a press release, social media forum, or website, that contradicts or is inconsistent with the Admitted Conduct or suggests that the Admitted Conduct is not wrongful (a "Contradictory Statement"). Any Contradictory Statement by CSC, its attorneys, agents, officers, or employees, shall constitute a violation of this Stipulation, thereby authorizing the Government to pursue any of the remedies set forth in this

Paragraph 12 above, or seek other appropriate relief from the Court. Before pursuing any remedy, the Government shall notify CSC that it has determined that CSC has made a Contradictory Statement. Upon receiving notice from the Government, CSC may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If CSC learns of a potential Contradictory Statement by its attorneys, agents, officers, or employees, CSC must notify the Government of the statement within 24 hours. The decision as to whether any statement constitutes a Contradictory Statement or will be imputed to CSC for the purpose of this Stipulation, or whether CSC adequately repudiated a Contradictory Statement to cure a violation of this Stipulation, shall be within the sole discretion of the Government. Consistent with this provision, CSC may raise defenses and/or assert affirmative claims or defenses in any proceeding brought by private and/or public parties, so long as doing so would not contradict or be inconsistent with the Admitted Conduct.

14. If CSC fails to pay any or all of the NYS Share when due, as set forth in Paragraph 3.b, above, the State will provide written notice of the default to be sent by first-class mail to CSC's counsel. In the event of default, the NYS Share shall be immediately due and payable, and interest shall accrue at the rate of 9% per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after the notice of default is sent. If the NYS Share, with all accrued interest, is not paid in full within seven (7) business days after the notice of default is sent, the State, at its option, may:

- a. Rescind this Stipulation and reinstate the Amended NYS Complaint;
- b. Seek specific performance of the Stipulation; or
- c. Exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity.

15. In the event that the State seeks remedies for collection or enforcement of CSC's obligations here under, and the State substantially prevails in its collection or enforcement action,

CSC shall be responsible for all reasonable costs and expenses incurred by the State in connection with that action.

16. In the event the State opts to rescind this Stipulation pursuant to Paragraph 14.a, CSC expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct, except to the extent such defense was available as of September 6, 2016.

17. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation; Relator agrees and confirms that the terms of this Stipulation are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and N.Y. State Fin. L. § 190(5)(b)(ii).

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

19. CSC waives and shall not assert any defenses CSC 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 Stipulation bars a remedy sought in such criminal prosecution or administrative action.

20. CSC represents and warrants that it has reviewed its financial situation, that it is currently not insolvent as such term is defined in 11 U.S.C. § 101(32) and that it reasonably believes that it shall remain solvent following payment to the Government and the State of the Settlement Amount. Further, the Settling Parties warrant that, in evaluating whether to execute

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

21. If within 91 days of the Effective Date of this Stipulation or any payment made under this Stipulation, CSC commences any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors or a third party commences any case, action, or other proceeding under any law related to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of CSC's debts, or seeking to adjudicate CSC as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for CSC or for all or part of CSC's assets, CSC agrees as follows:

- a. CSC's obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and CSC shall not argue or otherwise take the position in any such case, action, or proceeding that (i) CSC's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) CSC was insolvent at the time this Stipulation was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to CSC.
- b. If any of CSC's obligations under this Stipulation are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government or the State, at its option,

may rescind the release in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against CSC for the claims that would otherwise be covered by the release in Paragraphs 5 and 7 above, respectively. CSC agrees that (i) any such claim, action, or proceeding brought by the Government or the State would not be subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the case, action, or proceeding described in the first sentence of this Paragraph, and CSC shall not argue or otherwise contend that the Government’s or the State’s claim, action, or proceeding is subject to an automatic stay; (ii) CSC shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the Government or the State within 60 calendar days of written notification to CSC that the respective release(s) has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 10, 2012; and (iii) the Government and the State have valid claims against CSC in the amount of the US Share or the NYS Share, respectively, and the Government or the State may pursue its claim in the case, action, or proceeding described in the first sentence of this Paragraph, as well as in any other case, action, or proceeding.

- c. CSC acknowledges that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

22. 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), TRICARE, FEHBP carrier or payor, or any state payer, related to the Covered Conduct; and Defendant agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

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

- (1) the matters covered by this Stipulation;
- (2) the United States' audit(s) and civil[and any criminal] investigation(s) of matters covered by this Stipulation;
- (3) CSC's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with matters covered by this Stipulation (including attorneys' fees);
- (4) the negotiation and performance of this Stipulation; and
- (5) any payment CSC makes to the United States pursuant to this Stipulation and any payment CSC may make to the Relator, including expenses, costs and attorneys' fees;

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by CSC, and CSC shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or to any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by CSC or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, CSC shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs (as defined in this Paragraph) included in payments previously sought by CSC

from the United States or any State Medicaid program. CSC agrees that the United States, at a minimum, shall be entitled to recoup from CSC any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States, including the Department of Justice and/or the affected agencies, reserves its right to audit, examine, or re-examine CSC's books and records and to disagree with any calculation submitted by CSC or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by CSC, or the effect of any such Unallowable Costs on the amounts of such payments.

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

24. This Stipulation is intended to be for the benefit of the Settling Parties only. The Settling Parties do not release any claims against any other person or entity except as otherwise provided herein.

25. Each Settling Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation; provided, however, nothing in this Stipulation shall preclude Relator from seeking to recover her expenses or attorneys' fees and costs from CSC or the City, pursuant to 31 U.S.C. § 3730(d).

26. Any failure by the Government or the State to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government and/or the State, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

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

28. This Stipulation constitutes the complete agreement between the Settling Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Settling Parties.

29. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

30. This Stipulation is binding on CSC's successor entities.

31. This Stipulation is binding on Relator's successors, transferees, heirs, and assigns.

32. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

33. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:

Li Yu and Arastu Chaudhury
Assistant United States Attorneys
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor

New York, NY 10007
Email: li.yu@usdoj.gov

TO NEW YORK STATE:

David Abrams and Veronica Jordan-Davis
Special Assistant Attorneys General
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TO RELATOR:

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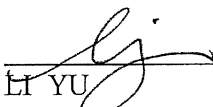
34. The effective date of this Stipulation is the date upon which the Stipulation is approved by the Court (the "Effective Date").

Agreed to by:

THE UNITED STATES OF AMERICA

Dated: New York, New York
June 26, 2020

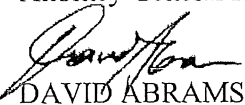
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THE STATE OF NEW YORK

Dated: New York, New York
June 25, 2020


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DEFENDANT CSC

Dated: New York New York
June 25, 2020


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SO ORDERED:



HON. JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

Dated: 7/28/, 2020