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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA ex rel. :
JOHN DOE, :

Plaintiff, :

v. :

LOCAL 95, DC 1707-AFSCME, AFL-CIO :
and DISTRICT COUNCIL 1707, :
LOCAL 95 HEAD START EMPLOYEES :
WELFARE FUND, :

Defendants. :

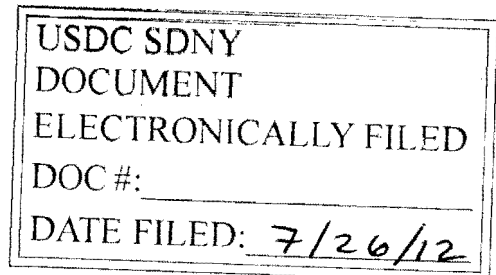
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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

DISTRICT COUNCIL 1707, LOCAL 95 :
HEAD START EMPLOYEES :
WELFARE FUND, :

Defendant. :
-----X



11 Civ. 1287 (WHP)

STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the "Stipulation" or

“Agreement”) is entered into among the United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, and on behalf of the United States Department of Health and Human Services (the “United States”), Defendant District Council 1707, Local 95 Head Start Employees Welfare Fund (“Defendant” or the “Fund”), and Relator Sanjay Shah (“Relator”) through their authorized representatives;

WHEREAS, Head Start is a federal program that provides grants to local public and private agencies to provide comprehensive child development services to economically disadvantaged children and families;

WHEREAS, the New York City Administration for Children’s Services (“ACS”) is a Head Start grantee;

WHEREAS, ACS uses Head Start grant money to pay insurance costs for employees carrying out the Head Start programs;

WHEREAS, the Fund administers the hospitalization insurance provided to the employees carrying out the Head Start programs, and, in that role, submits invoices to ACS for reimbursement for hospitalization insurance premiums, which are paid for by ACS using Head Start grant money;

WHEREAS, on February 21, 2011, Relator filed a *qui tam* action in the United States District Court for the Southern District of New York, captioned *United States of America ex rel. John Doe v. Local 95, DC 1707-AFSCME, AFL-CIO*, 11 Civ. 1287 (WHP), on behalf of the United States of America, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b). Relator’s complaint alleged, among other things, that the union representing the employees carrying out the Head Start programs submitted false and fraudulent claims to ACS for payment of funds provided pursuant to ACS’s federal Head Start grant;

WHEREAS, Relator added the Fund as a defendant by amending his complaint on May

24, 2012 (“Relator’s Action”);

WHEREAS, the United States has intervened in the Relator’s Action and has filed the Complaint-in-Intervention of the United States of America (the “Federal Complaint”) alleging that the Fund submitted invoices to ACS for higher hospitalization insurance premium amounts than the Fund was actually paying for such premiums, and that ACS paid these higher amounts with Head Start grant funds;

WHEREAS, Defendant’s conduct as alleged in the Federal Complaint shall be defined for purposes of this settlement as the “Covered Conduct”;

WHEREAS, this Stipulation is neither an admission of liability by Defendant nor a concession by the United States that its claims are not well founded;

NOW, THEREFORE, in consideration of the mutual promises and obligations of this Stipulation, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The Parties consent to this Court’s exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them.
2. The Fund admits, acknowledges, and accepts responsibility for the following facts alleged in the Federal Complaint:
 - a. During the relevant time period, the Fund submitted invoices to ACS for reimbursement of hospitalization insurance premiums;
 - b. The invoices that the Fund submitted to ACS for reimbursement of hospitalization insurance were for a higher amount than the Fund actually paid pursuant to its agreement with Empire Blue Cross Blue Shield during certain business cycles over the relevant time period; and

c. The Fund did not reimburse ACS or the United States the difference between what it charged and what it paid for hospitalization insurance premiums for the relevant time period.

3. The Fund shall pay the United States a total of four million eight-hundred fourteen thousand and twenty-two dollars and 98 cents (\$4,814,022.98) (the "Settlement Amount") for the loss claimed by the United States due to the Covered Conduct. The Fund shall make the payment by electronic funds transfer no later than twenty business days after the Effective Date (defined below) pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of New York.

4. Conditioned upon the Fund's payment of the Settlement Amount, the United States releases the Fund and all of its current and former officers, directors, trustees, employees, affiliates, 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; and the common law or equitable theories of fraud, payment by mistake and unjust enrichment. The United States shall seek the simultaneous filing and dismissal with prejudice of the Federal Complaint as against the Fund, as well as the dismissal with prejudice of Relator's Action as against the Fund.

5. Relator, for himself and for his heirs, executors, administrators, personal representatives, family members, successors, attorneys, agents, and assigns, releases and forever discharges the Fund and all of its current and former officers, directors, trustees, employees, affiliates, and assigns, as well as Local 95 and all of its current and former officers, directors, trustees, employees, affiliates, and assigns (the "Released Parties"), from any and all manner of

claims, proceedings and causes of action of any kind or description whatsoever, known or unknown, contingent or accrued that Relator and/or his heirs, executors, administrators, and assigns have against the Released Parties arising out of or by reason of any cause, matter, thing, fact, circumstance, event or agreement whatsoever occurring prior to the execution of this Agreement, including but not limited to any claims in, relating to or arising out of Relator's Action or the Federal Complaint except for any claims Relator has for attorney's fees and costs pursuant to 31 U.S.C. § 3730(d).

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

7. Notwithstanding the release given in Paragraph 4 of this Stipulation, or any other term of this Stipulation, the following claims 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, including suspension and debarment rights of any federal agency;
- d. Any liability arising under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*;
- e. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and

f. Any liability based upon obligations created by this Stipulation.

8. The Fund shall be in default of this Stipulation if it fails to make any payment set forth in paragraph 3 on or before its due date. The United States will provide written notice of any default, to be sent by email and first-class mail to the undersigned attorneys for the Fund. In the event of default, the entire remaining unpaid Settlement Amount shall be immediately due and payable by the Fund, and interest shall accrue at the rate of 12% per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after delivery of the notice of default. If the Settlement Amount, with all accrued interest, is not paid in full within seven (7) business days after delivery of the notice of default, the Fund shall agree to a Consent Judgment against the Fund in the amount of the unpaid balance, and the United States, at its option, may: (a) rescind this Stipulation and reinstate the Federal Complaint filed in this action as to the Fund or seek specific performance of the Stipulation; (b) offset the remaining unpaid balance from any amounts due and owing the Fund by any department, agency or agent of the United States at the time of default; or (c) exercise any other rights granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The Fund shall not contest any offset imposed or any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any State or Federal court. In addition, the Fund shall pay the United States 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, the Fund 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 which relate to the Covered Conduct.

9. Relator and his 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).

10. The Fund waives and shall not assert any defenses it 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.

11. Nothing in this paragraph or any other provision of this Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. 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 the Head Start Act, 42 U.S.C. § 9831 *et seq.*, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Fund, its present or former officers, directors, trustees, 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 the matters covered by this Stipulation;
- (3) Defendant's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Stipulation (including attorney's fees);

- (4) the negotiation and performance of this Stipulation; and
- (5) the payments made to the United States pursuant to this Stipulation and any payments that the Fund or any other of the Fund's present or former officers, directors, trustees, employees, and agents make to Relator, including for his costs and attorney's fees.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers or categories by the Fund, and the Fund shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, the Fund shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by the Fund or any of its subsidiaries or affiliates from the United States. The Fund agrees that the United States, at a minimum, shall be entitled to recoup from the Fund any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine the Fund's books and records and to disagree with any calculations submitted by the Fund or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by the Fund, or the effect of any such Unallowable Costs on the amount 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 the Fund's books and records to determine

whether Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

e. The United States reserves its right to disagree with any calculations submitted by the Fund or the effect of inclusion of Unallowable Costs on the Fund's or any of its subsidiaries or affiliates' cost reports, cost statements or information reports (including CFRs and appeals).

13. The Fund represents and warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the 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 the Fund, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which the Fund was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

14. If within 91 days of the Effective Date of this Stipulation or of any payment made under this Stipulation, the Fund commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of the Fund's debts, or seeking to adjudicate the Fund as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar

official for the Fund or for all or any substantial part of the Fund's assets, the Fund agrees as follows:

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

b. If the Fund'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 United States, at its sole option, may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against the Fund for the claims that would otherwise be covered by the releases provided in Paragraphs 4 and 5 above. The Fund agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this paragraph, and the Fund shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) the Fund 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 claims, actions, or proceedings that are brought by the United States within 60 calendar days of written notification to the Fund that the releases have been rescinded pursuant to this paragraph,

and (iii) the United States has a valid claim against the Fund in the amount of five million dollars, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this paragraph, as well as in any other case, action, or proceeding.

c. The Fund acknowledges that its agreements in this paragraph are provided in exchange for valuable consideration provided in this Stipulation.

15. Except as expressly provided to the contrary in this Stipulation, this Stipulation 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 provided in paragraphs 4, 5, 6, and 7.

16. 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 Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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

20. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

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

22. Any notices pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier, or facsimile transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:

Ellen London
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
Telephone: (212) 637-2737
Facsimile: (212) 637-2702

TO DEFENDANT THE FUND:

Stuart Gerson
Epstein Becker & Green
1227 25th Street, NW
Washington, DC 20037
Telephone: (202) 861-4180
Facsimile: (202) 861-3540

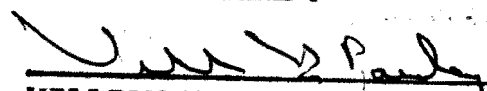
TO RELATOR:

Robert Sadowski
Diamond McCarthy LLP
620 8th Avenue, 39th Floor
New York, NY 10018
Telephone: (212) 430-5407
Facsimile: (212) 430-5499

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

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SO ORDERED:


WILLIAM H. PAULEY III U.S.D.J.

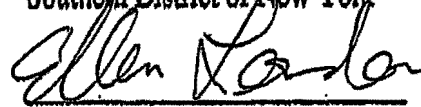
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THE UNITED STATES OF AMERICA

Dated: New York, New York
June 29, 2012

PREET BHARARA
United States Attorney for the
Southern District of New York

By:



Ellen London
Assistant United States Attorney
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New York, New York 10007
Telephone: (212) 637-2737
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DEFENDANT THE FUND

Dated: New York, New York
June 29, 2012

EPSTEIN BECKER & GREEN
Attorneys for the Fund

By:



Stuart Gerson
Epstein Becker & Green
1227 25th Street, NW
Washington, DC 20037
Telephone: (202) 861-4180
Facsimile: (202) 861-3540

RELATOR

Dated: New York, New York
June 29, 2012

By:

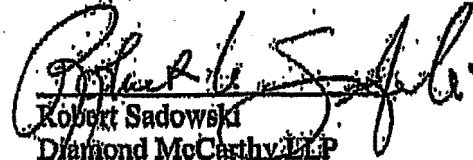


Sanjay Shah, Relator

Dated: New York, New York
June 29, 2012

DIAMOND MCCARTHY LLP
Attorneys for Relator

By:



Robert Sadowski
Diamond McCarthy LLP
620 8th Avenue, 39th Floor
New York, NY 10018
Telephone: (212) 430-5407
Facsimile: (212) 430-5499

SO ORDERED:

THE HONORABLE WILLIAM H. PAULEY III
United States District Judge

Dated: _____