

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among: (a) 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”), and the Defense Health Agency (“DHA”), acting on behalf of the TRICARE Program (collectively, the “United States”); (b) Interface Rehab Inc. (“Interface” or “Defendant”); and (c) Relator Keith Pennetti (“Relator”); (the United States, Interface, and Relator are collectively referred to herein as “the Parties”), through their authorized representatives.

RECITALS

A. Interface is a privately held California rehabilitation therapy corporation providing physical, occupational, and speech therapy in a variety of medical settings throughout the State of California. Interface contracted with Longwood Management Corporation (“Longwood”) to provide these rehabilitation therapy services at a number of skilled nursing facilities, including the facilities listed below in Appendix A (“Subject Facilities”), at all times relevant to this Agreement.

B. On May 20, 2014, Relator filed a *qui tam* action in the United States District Court for the Central District of California captioned *United States ex rel. Pennetti v. Interface Rehab Inc., et al.*, Case Number CV-14-4133, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The Civil Action alleges, among other things, that Interface knowingly submitted or caused the submission of false claims for medically unnecessary rehabilitation therapy services provided to Medicare Part A patients at skilled nursing facilities operated by Longwood, including at the Subject Facilities. Concurrent

with this Agreement, the United States is intervening for settlement purposes in the Civil Action with regard to Interface and the Covered Conduct delineated below.

C. The United States contends that Interface 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”); and the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”).

D. The United States contends that it has certain civil claims against Interface for knowingly submitting or causing the submission of false and fraudulent claims to Medicare and TRICARE for medically unreasonable and unnecessary Ultra High Resource Utilization Group (“Ultra High RUG”) levels of rehabilitation therapy provided to Medicare Part A and TRICARE beneficiaries at the Subject Facilities from January 1, 2006 through October 10, 2014. Specifically, the United States contends that Interface knew or should have known that it was submitting or causing the submission of these false claims because it pressured therapists to increase the amount of therapy provided to patients in order to meet pre-planned targets for Medicare revenue. The United States contends that these targets were set without regard to patients’ individual therapy needs and could only be achieved by billing for a high percentage of patients at the Ultra High RUG level. The conduct described in this Paragraph is referred to below as the “Covered Conduct.”

E. This Agreement is neither an admission of liability by Interface nor a concession by the United States or Relator that their claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d)(1) to a share of the proceeds of this 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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Interface shall pay to the United States a sum of Two Million dollars (\$2,000,000) (“Settlement Amount”), plus interest at a rate of 0.875% from the Effective Date of this Agreement. Of the Settlement Amount, \$1,232,029 is restitution. Interface shall pay the Settlement Amount and interest by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice. Payments shall be made in accordance with the schedule at Appendix B, with the initial payment of \$500,000 made no later than 14 days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving each payment detailed in Appendix B from Interface and as soon as feasible after receipt of each such payment, the United States shall pay, by electronic funds transfer pursuant to written instructions provided by counsel for Relator, the amounts listed in Appendix C. In total, the United States shall pay \$360,000, plus a proportionate share of interest, to Relator.

3. Interface shall pay to counsel for Relator the sum of \$15,000 for attorney’s fees and costs pursuant to 31 U.S.C. § 3730(d), no later than 14 days after the Effective Date of this Agreement pursuant to written instructions provided by counsel for Relator.

4. As long as Interface is in compliance with the terms of the Agreement, the United States covenants not to sue Interface for the Covered Conduct. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and subject to Paragraph 16 (concerning default) and Paragraph 18 (concerning bankruptcy) below, and conditioned upon Interface’s full payment of the Settlement Amount and interest, the United States’ covenant not to sue will

mature into a full and final release of Interface 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. Subject to the exceptions in Paragraph 6 below, and subject to Paragraph 16 (concerning default) and Paragraph 18 (concerning bankruptcy) below, and conditioned upon Interface's full payment of the Settlement Amount plus interest and all amounts to be paid pursuant to statutory claims for attorneys' fees, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Interface 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, as well as any other claims that may arise from the allegations in the Civil Action.

6. Notwithstanding the releases given in Paragraphs 4 and 5 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;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. 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). Conditioned upon Relator's receipt of the payments described in Paragraph 2, Relator and his 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.

8. Conditioned upon payment in full of the amount described in Paragraph 3, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Interface, and its 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.

9. Interface waives and shall not assert any defenses Interface 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.

10. Interface 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 Interface 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 Civil Action or the United States' investigation or prosecution thereof.

11. Interface fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Interface has asserted, could have asserted, or may assert in the future against the Relator related to the Civil Action or the Relator's investigation or prosecution thereof.

12. 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, or any state payer, related to the Covered Conduct; and Interface agrees not to resubmit to any Medicare contractor, TRICARE 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.

13. Interface 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 Interface, 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) Interface'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 Interface makes to the United States pursuant to this Agreement and any payments that Interface 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 Interface, and Interface 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 Interface or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Interface 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 Interface 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. Interface agrees that the United States, at a minimum, shall be entitled to recoup from Interface 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 Interface or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Interface 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 Interface's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

14. 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 15 (waiver for beneficiaries paragraph), below.

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

16.

a. In the event that Interface fails to pay any or all of the payments owed pursuant to this Agreement within five business days of the due date, Interface shall be in Default of its payment obligations under this Agreement (“Default”). The United States will provide a written Notice of Default, and Interface 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 Interface, or to such other representative as Interface shall designate in advance in writing. If Interface fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States 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, Interface agrees 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 Interface 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 Interface 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 of the Settlement Amount and interest from any amounts due and owing to Interface, or any of its subsidiaries or affiliates, 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, Interface 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. Interface 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, Interface agrees that OIG-HHS may exclude Interface from participating in all Federal health care programs until Interface pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Interface. Interface 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, Interface wishes to apply for reinstatement, Interface must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Interface 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.

17. In the event that the United States, pursuant to Paragraph 16, above, opts to rescind this Agreement, Interface 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 Interface signatories that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on May 20, 2014.

18. In exchange for valuable consideration provided in this Agreement, Interface acknowledges the following:

a. Interface has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States 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 Interface, 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 Interface 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 Interface's obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Interface 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 Interface's debts, or to adjudicate Interface as bankrupt or insolvent; or seeking appointment of a receiver, trustee,

custodian, or other similar official for Interface or for all or any substantial part of Interface'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 Interface 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 Interface in the amount of \$16,315,893, less any payments received pursuant to this agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Interface, a receiver, trustee, custodian, or other similar official for Interface; and

(iii) if any payments are avoided and recovered by Interface, a receiver, trustee, custodian, or similar official for Interface, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return any portions of such payments already paid by the United States to Relator pursuant to Paragraph 2.

f. Interface agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 18.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. Interface 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). Interface 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 Interface that the releases

have been rescinded pursuant to this paragraph, except to the extent such defenses were available on May 20, 2014.

19. Upon receipt of the full initial payment described in Paragraph 1 and full payment described in paragraph 3, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

20. Except as specified in Paragraph 3 above, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

22. 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 Central District of California. 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.

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

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

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

26. This Agreement is binding on Interface's successors, transferees, heirs, and assigns.

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

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

29. 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.

[SIGNATURE PAGES TO FOLLOW]

THE UNITED STATES OF AMERICA

DATED: June 11, 2021

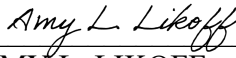
BY:



JOHN E. LEE
Assistant United States Attorney
Central District of California

DATED: June 16, 2021

BY:



AMY L. LIKOFF
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY:

LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

DATED: _____

BY:

SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

THE UNITED STATES OF AMERICA


DATED: _____

BY: _____
JOHN E. LEE
Assistant United States Attorney
Central District of California

DATED: _____

BY: _____
AMY L. LIKOFF
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 5/20/2021


BY: 
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

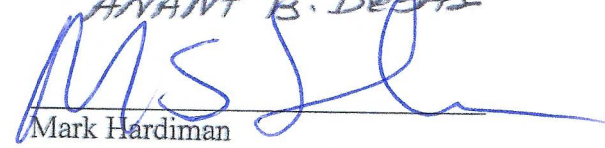
DATED: 06/08/2021

BY: BLEY.PAUL.NICHOLAS.1099873821
for SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense


Digitally signed by
BLEY.PAUL.NICHOLAS.10998738
21
Date: 2021.06.08 12:14:12 -04'00'


INTERFACE - DEFENDANT

DATED: 05/30/2021 BY: 
[X] AVANT B. DESAI

DATED: 5-20-21 BY: 
Mark Hardiman
Counsel for Interface

KEITH PENNETTI - RELATOR

DATED: 6-3-2021 BY: 
Keith Pennetti
Relator

DATED: June 2, 2021 BY: 
R. Scott Oswald
The Employment Law Group, P.C.
Counsel for Keith Pennetti

APPENDIX A

The following entities are defined as the “Subject Facilities”:

Facility Name	Corporate Name	NPI Number
Colonial Care Center	Colonial Care Center Inc.	1639257165
Covina Rehabilitation Center	Covina Care Center Inc.	1992885958
Crenshaw Nursing Home	Crenshaw Enterprises, Inc.	1386728939
Green Acres Lodge	Green Acres Lodge Inc.	1669552022
Imperial Care Center	ICC Convalescent Corp.	1265502405
Laurel Convalescent Hospital	Laurel Wellness and Nursing Center, LLC	1285874560
Live Oak Rehabilitation Center	SGV Health Care, Inc.	1194805630
Longwood Manor Convalescent Hospital	Longwood Enterprises, Inc.	1235213810
Monterey Care Center	Monterey Care Center Inc.	1831294974
San Gabriel Convalescent Center	San Gabriel Convalescent Center Inc.	1215011556
Whittier Pacific Care Center	Shea Healthcare Center, Inc.	1679657993

APPENDIX B

Quarter	Payment	Interest	Principal	Balance	Due Date
				2,000,000.00	
Initial	\$500,000.00	\$671.23	\$499,328.77	\$1,500,671.23	14 days after Effective Date of Settlement Agreement
1	\$377,221.75	\$3,282.72	\$373,939.03	\$1,126,732.20	91 days after initial payment
2	\$377,221.75	\$2,464.73	\$374,757.02	\$751,975.18	182 days after initial payment
3	\$377,221.75	\$1,644.95	\$375,575.80	\$376,398.38	273 days after initial payment
4	\$377,221.75	\$823.37	\$376,398.38	-	364 days after initial payment
Total	\$2,008,887.00	\$8,887.00	\$2,000,000.00		

APPENDIX C

Quarter	Payment from Interface	Payment to Relator
Initial	\$500,000.00	\$90,000.00
1	\$377,221.75	\$67,900.00
2	\$377,221.75	\$67,900.00
3	\$377,221.75	\$67,900.00
4	\$377,221.75	\$67,900.00
Total	\$2,008,887.00	\$361,600.00