

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney's Office for the District of New Jersey and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively, the "United States"), and BAYADA, BAYADA Home Health Care, Inc., BAYADA Health, LLC, BAYADA Home Care, (collectively, the "BAYADA Companies"), and David Freedman ("Relator") (collectively, referred to as "the Parties"), through their authorized representatives.

RECITALS

A. BAYADA is a 501(c)(3) corporation that is registered in Delaware and has its headquarters in Moorestown, New Jersey. BAYADA is the sole member of BAYADA Health, LLC, which is the sole member of BAYADA Home Health Care, Inc. The BAYADA Companies operate home health care agencies ("HHAs") nationwide, providing nursing, rehabilitative, therapeutic, hospice, and assistive care services to patients at home and in residential facilities. The BAYADA Companies rely on a network of referrals to secure patients for their services, including referrals of patients at residential facilities operated by [REDACTED]

[REDACTED].

B. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

C. On August 18, 2017, Relator filed a *qui tam* action in the United States District Court for the District of New Jersey, captioned [REDACTED]

[REDACTED] (D.N.J.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator filed an amended complaint on June 6, 2018 and a second amended complaint on June 30, 2021 (“Second Amended Complaint”). In his complaints, Relator alleged, *inter alia*, that the BAYADA Companies purchased the [REDACTED] HHAs in Arizona in order to induce patient referrals from [REDACTED] in violation of the False Claims Act, 31 U.S.C. § 3730 (the “FCA”), and the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (the “AKS”). The United States is partially intervening in the Civil Action for the purpose of this settlement.

D. The United States contends that from January 2014 through October 2020, the BAYADA Companies submitted or caused to be submitted claims for payments to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”).

E. The United States contends that from January 1, 2014 through October 31, 2020, the BAYADA Companies submitted false claims for payment to Medicare for services provided to beneficiaries who were referred from the following [REDACTED] retirement homes: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The United States further contends that these claims were false because in early 2014, in violation of the AKS, the BAYADA Companies knowingly and willfully purchased [REDACTED] in order to induce referrals of Medicare beneficiaries living in [REDACTED] residential communities to HHAs operated by the BAYADA Companies. This conduct is referred to below as the “Covered Conduct.”

F. The United States contends that it has certain civil claims against the BAYADA Companies arising from the Covered Conduct.

G. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the Settlement Proceeds (defined below) and to Relator's reasonable expenses, attorneys' fees, and costs.

H. This Settlement Agreement is neither an admission of liability by the BAYADA Companies nor a concession by the United States or by Relator that their claims are not well founded. The BAYADA Companies deny the allegations in Recital E and Relator's allegations in the Civil Action.

I. 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 BAYADA Companies shall pay the following sum to the United States no later than fourteen (14) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey: seventeen million dollars (\$17,000,000) (Settlement Amount), of which eight million, five hundred thousand dollars (\$8,500,000) is restitution, plus interest on the Settlement Amount at an annual rate of 1.625%, to accrue from June 1, 2021, through the date of payment. The Settlement Amount plus the interest described in this paragraph shall hereafter be referred to as the "Settlement Proceeds."

2. Conditioned upon the United States receiving the Settlement Proceeds and as soon as feasible after receipt, the United States shall pay three million sixty-thousand dollars (\$3,060,000) to Relator by electronic funds transfer (Relator's Share).

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Proceeds, the United States releases the BAYADA Companies, together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns 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.

4. Subject to the exceptions in this paragraph and in Paragraph 5 below, and upon the United States' receipt of the Settlement Proceeds, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases David Baiada, J. Mark Baiada, the BAYADA Companies and any and all of [REDACTED] [REDACTED] in which any of the BAYADA Companies or their subsidiaries or corporate affiliates are or were members, owners, or shareholders (the "BAYADA Defendants"), together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; the corporate successors and assigns of any of them; and the officers, directors, and employees thereof, from any civil claims Relator has on behalf of himself or on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733, and any claims Relator has asserted, could have asserted, or may assert in the future, related to the Covered Conduct or related to the allegations in the Civil Action, except as provided for in this Agreement. Notwithstanding the release provided by Relator in this

paragraph, or any other release provided in this Settlement Agreement, Relator expressly reserves and does not release the following claims:

- a. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; and
- b. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

5. Notwithstanding the releases given in Paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

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

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

6. 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 Relator's Share, 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 settlement of the Covered Conduct or any other claims alleged against the BAYADA Defendants in 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.

7. No later than fourteen (14) days after the Effective Date of this Agreement, the BAYADA Companies shall pay to Relator's counsel of record the sum of \$695,000 by electronic funds transfer pursuant to instructions to be provided by Relator's counsel. The BAYADA Companies' payment of the \$695,000 is in full satisfaction of Relator's claim against the BAYADA Defendants for expenses, attorneys' fees, and costs pursuant to 31 U.S.C. § 3730(d)(1) or any other common law theories of recovery for such expenses, attorneys' fees, and costs.

8. The BAYADA Companies waive and shall not assert any defenses the BAYADA Companies 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.

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

10. The BAYADA Companies fully and finally release Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the BAYADA Defendants have asserted, could have asserted, or may assert in the future against Relator, related to the Civil Action and Relator's investigation and prosecution thereof. Notwithstanding the release provided by the BAYADA Companies in this paragraph, or any other release provided in this Settlement Agreement, the BAYADA Companies expressly reserve and do not release or waive any defenses, counterclaims, or claims that the BAYADA Companies have asserted, could have asserted, or may assert in the future against Relator in response [REDACTED]. Notwithstanding the release provided by Relator in Paragraph 4, or any other release provided in this Settlement

Agreement, Relator expressly reserves and does not release his right to request discovery from the BAYADA Companies in connection with the Civil Action.

11. The Settlement Proceeds 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 BAYADA Companies agree 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.

12. The BAYADA Companies 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 BAYADA Companies, 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) The BAYADA Companies' 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 the BAYADA Companies makes to the United States pursuant to this Agreement and any payments that the BAYADA Companies may make to Relator, including costs and attorneys' fees

are unallowable costs for government contracting purposes and under the Medicare Program (hereinafter referred to as Unallowable Costs); and

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by the BAYADA Companies, and the BAYADA Companies 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 BAYADA Companies or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: the BAYADA Companies 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 the BAYADA Companies 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. The BAYADA Companies agree that the United States, at a minimum, shall be entitled to recoup from the BAYADA Companies 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 the BAYADA Companies or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on the BAYADA Companies 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 the BAYADA Companies' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

13. The BAYADA Companies agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, the BAYADA Companies shall encourage, and agree not to impair, the cooperation of its directors, officers, employees, and their contractors or vendors, 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. The BAYADA Companies further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that have been performed by another on their behalf.

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. The BAYADA Companies 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.

16. Upon receipt of the payment described in Paragraph 1, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of all claims against the BAYADA Defendants and in the Civil Action pursuant to Rule 41(a)(1), with

[REDACTED]

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

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

19. 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 District of New Jersey. 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.

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

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

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

23. This Agreement is binding on the BAYADA Companies' successors, transferees, heirs, and assigns.

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

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

26. 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.

[Signatures Begin On Next Page]

THE UNITED STATES OF AMERICA

DATED: 9/7/2021

BY:



DANIEL W. MEYLER
Assistant United States Attorney
United States Attorney's Office
District of New Jersey

APPROVED:



LEE M. CORTES, JR.
Chief, Health Care Fraud Unit
United States Attorney's Office
District of New Jersey

APPROVED:



RACHAEL A. HONIG
Acting United States Attorney
United States Attorney's Office
District of New Jersey

DATED: _____

BY:

SAMSON O. ASIYANBI
Trial Attorney
Commercial Litigation Branch
Civil Division

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

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United States Attorney's Office
District of New Jersey

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LEE M. CORTES, JR.
Chief, Health Care Fraud Unit
United States Attorney's Office
District of New Jersey

APPROVED:

RACHAEL A. HONIG
Acting United States Attorney
United States Attorney's Office
District of New Jersey

DATED: _____

BY:

SAMSON
ASIYANBI

SAMSON O. ASIYANBI
Trial Attorney
Commercial Litigation Branch
Civil Division

Digitally signed by SAMSON
ASIYANBI
Date: 2021.09.08 09:14:12
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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

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THE UNITED STATES OF AMERICA

DATED: _____

BY:

DANIEL W. MEYLER
Assistant United States Attorney
United States Attorney's Office
District of New Jersey

APPROVED:

LEE M. CORTES, JR.
Chief, Health Care Fraud Unit
United States Attorney's Office
District of New Jersey

APPROVED:

RACHAEL A. HONIG
Acting United States Attorney
United States Attorney's Office
District of New Jersey

DATED: _____

BY:

SAMSON O. ASIYANBI
Trial Attorney
Commercial Litigation Branch
Civil Division

DATED: 9/07/2021

BY:

Lisa M. Re

LISA M. RE

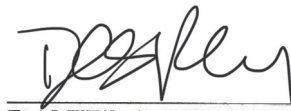
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

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BAYADA COMPANIES - DEFENDANT

DATED: 8/30/21

BY:



DANIEL S. REINBERG

ASHER D. FUNK

Polsinelli P.C.

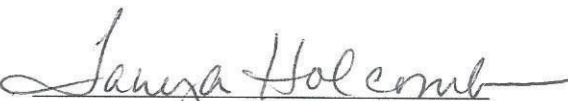
150 N. Riverside Plaza, Suite 3000

Chicago, IL 60606

Counsel for the BAYADA Companies

DATED: 8/30/21

BY:



TANYA HOLCOMB

General Counsel for BAYADA

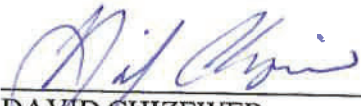
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DAVID FREEDMAN - RELATOR

DATED: 8/31/21

BY: 
DAVID FREEDMAN

DATED: 8/31/21

BY: 
DAVID CHIZEWER
DAVID MORRISON
Goldberg Kohn Ltd.
55 East Monroe, Suite 3300
Chicago, IL 60603

Counsel for Relator David Freedman