

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES

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In the Matter of:

BUZZ TRANSPORT LLC and;

RANDOLPH RHYMAUN, owner of BUZZ TRANSPORT
LLC.

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) reached the 8th day of January 202⁵ is by and among the State of New York (the “State”) by the Office of the Attorney General through the Medicaid Fraud Control Unit (“MFCU”) and Buzz Transport LLC (“Buzz Transport”) and Randolph Rhymaun, as the owner and operator of Buzz Transport (“Rhymaun”). The State, Buzz Transport and Rhymaun shall be collectively referred to as the “Parties.”

WHEREAS, Buzz Transport, a New York corporation with its principal place of business located at 2816 Atlantic Avenue, Hudson, New York (Columbia County) is a transportation company, owned and operated by Rhymaun, and is an enrolled provider in the Medical Assistance Program (“Medicaid”) with a provider identification number of 04042568; and as such, provides transportation services for Medicaid recipients traveling to or from medical services paid for by Medicaid;

WHEREAS, Rhymaun is the sole owner and operator of Buzz Transport;

WHEREAS, Buzz Transport and Rhymaun submitted and caused to be submitted claims for reimbursement to Medicaid under 42 U.S.C §§ 1396 -1396w-5, and Medicaid relied on such claims to pay Buzz Transport for transportation services;

WHEREAS, MFCU conducted an investigation of Buzz Transport and Rhymaun and determined that between March 16, 2016, through July 3, 2021 (hereinafter the “Relevant Period”), Buzz Transport and Rhymaun presented claims for payment for transportation services to which it was not entitled, and Medicaid relied upon such claims to pay Buzz Transport;

WHEREAS, in connection with the above-described investigation, and under existing administrative claims withholding procedures, the New York State Department of Health (“DOH”) instituted a withhold of twenty five percent (25%) of Medicaid payments to Buzz Transport, pursuant to 18 NYCRR §§ 504.8(d), 518.7; 42 C.F.R. § 455.23; NY Public Health Law §§ 31, 32; and NY Soc. Serv. Law § 363-a (“Withhold”), and the amount under Withhold (“Withhold Amount”) is being held in escrow by the New York State Office of the State Comptroller and DOH;

WHEREAS, pursuant to 18 NYCRR § 505.10 and the New York State Medicaid Program Transportation Manual Policy Guidelines (Version 2019-1), Buzz Transport and Rhymaun were only entitled to submit claims for reimbursement for the actual amount of toll payments made in the course of providing transportation service to Medicaid recipients;

WHEREAS, the State has determined that Buzz Transport and Rhymaun engaged in the following conduct (the “Covered Conduct”) during the Relevant Period:

- a. Buzz Transport and Rhymaun submitted Seven Thousand Two Hundred and Fifty-Three (7,253) toll reimbursement requests for tolls that it did not in fact incur (“Overcharged Tolls”); and
- b. As a result of the foregoing, Buzz Transport and Rhymaun received payments to which they were not entitled;

WHEREAS, as a result of the Covered Conduct, Buzz Transport and Rhymaun caused the State to suffer damages of at least the amount to be repaid under this Agreement; and

WHEREAS, Buzz Transport and Rhymaun wish to resolve their civil liability for the Covered Conduct.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. Buzz Transport and Rhymaun admit, acknowledge and accept responsibility for the Covered Conduct.

2. As repayment to the State for the Covered Conduct and to resolve any claims related to the Covered Conduct, Buzz Transport and Rhymaun shall pay the State the sum of Three Hundred Sixty-Three Thousand Nine Hundred Ninety-Five Dollars (\$363,995.00) (the “Settlement Amount”), plus interest at the rate of nine percent (9%), to be paid according to the conditions set forth below.

3. The Settlement Amount shall constitute a debt immediately due and owing to the State subject to the terms of this Agreement, and shall be paid as follows:

a. *Withhold Payment*

i. Buzz Transport and Rhymaun consent to the transfer and payment to the State of the Withhold Amount, which as of March 2, 2023, totaled Three Hundred Sixty Three Hundred Nine Hundred Ninety Five dollars (\$363,995.00) in satisfaction of the Settlement Amount, and further waive any and all right, title, or interest that Buzz Transport and/or Rhymaun have to the Withhold Amount (“Withhold Payment”);

ii. MFCU will request that DOH transfer the Withhold Amount to MFCU as soon as practicable pursuant to this Agreement, and Buzz Transport and

- Rhymaun agree to cooperate with MFCU, DOH, Office of the Medicaid Inspector General (“OMIG”) and other representatives of the State effectuating the transfer of the Withhold Amount to the State, including but not limited to, executing any documents necessary to effectuate the transfer;
- iii. All Withhold funds transferred and paid to the State shall be applied and credited toward Buzz Transport’s payment of the Settlement Amount;
 - iv. If any Withhold funds are transferred or paid by DOH directly to Buzz Transport before Buzz Transport’s and/or Rhymaun’s full payment of the Settlement Amount, Buzz Transport and Rhymaun agree to notify the State immediately and to remit all Withhold funds received to MFCU by wire transfer or certified check within five (5) business days of the receipt of such funds. Once received by MFCU, these funds will be credited and applied toward payment of the Settlement Amount;
 - v. After it receives the Withhold Amount, MFCU will provide written notice (the “Written Notice”) to Buzz Transport and Rhymaun of the total Withhold Amount received by the State as of the date of the Written Notice, by sending the Written Notice via e-mail to Buzz Transport’s counsel and Rhymaun.

- 4. The entire Settlement Amount constitutes restitution.

RELEASES

- 5. Subject to the provisions of Paragraph 11 (concerning excluded claims) below and Paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement) respectively, and conditioned upon the State’s receipt of the Settlement Amount, the State releases Buzz Transport and Rhymaun and all predecessors,

successors, members, assigns, and corporations, from any civil monetary cause of action that the State has for the Covered Conduct under New York Executive Law § 63-c, and the common law theories of payment by unjust enrichment, and breach of contract.

6. Notwithstanding the releases given in Paragraph 10, the State specifically does not release any person or entity from any of the following liabilities:

- a. Any civil, criminal, or administrative liability arising under State tax codes;
- b. Any criminal liability;
- c. Any administrative liability, including mandatory or permissive exclusion from the State's Medicaid Program;
- d. Any civil or administrative liability that Buzz Transport and/or Rhymaun have or may have to the State or to individual consumers or State program payors under any statute, regulation, or rule not expressly covered by the releases given in Paragraph 10 above, including but not limited to, any and all claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- e. Any liability pursuant to the New York False Claims Act, New York State Financial Law § 189, et seq.; Executive Law § 63(12); Social Services Law § 145-b; or fraud;
- f. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- g. Any liability for personal injury, patient abuse or neglect, arising from the Covered Conduct;
- h. Any liability of individuals other than Rhymaun;

- i. Any liability that may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid Program on a capitated basis, other than liability of Buzz Transport and Rhymaun to the State for the Covered Conduct; and
 - j. Any liability based upon obligations created by this Agreement.
7. Buzz Transport and Rhymaun waive and shall not assert any defenses they may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part upon a contention under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution and assent that this Agreement bars a remedy sought in such criminal prosecution or administrative action.
8. Buzz Transport, including any and all predecessors, successors, and members, together with their current and former officers, directors, trustees, servants, employees, and assigns, and Rhymaun, fully and finally release the State, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Buzz Transport and/or Rhymaun have asserted, could have asserted, or may assert in the future against the State, its agencies, officers, agents, employees, and servants, related to the Covered Conduct, and the State's investigation and prosecution thereof.

INTEGRITY OBLIGATION

9. The Parties acknowledge that a primary purpose of this Agreement is to promote compliance with the statutes, regulations, and written directives of the Medicaid Program. To further that objective, Buzz Transport and Rhymaun acknowledge that they have reviewed, and are required to comply with the rules and regulations of the Medicaid Program, including but not limited to, those applicable to transportation providers as set forth in 18 NYCRR § 505.10 and the

New York State Medicaid Program Transportation Manual Policy Guidelines, and Medicaid Updates. Buzz and Rhymaun further agree that they shall not engage, or attempt to engage, in violations of any applicable law, regulation, or Medicaid guidelines, including but not limited to 18 NYCRR § 515.2 and 18 NYCRR §§ 504.3, 517.3(b), 505.10(e)(4), 510.10(6)(iii), and those provisions of the Transportation Manual Policy Guidelines governing the submission of claims for reimbursement for mileage incurred, tolls incurred, and group rides. Buzz and Rhymaun further acknowledge that, should they engage in the conduct described in the Covered Conduct, above, or otherwise engage in conduct violative of the laws, rules and regulations referenced in this paragraph, they may be subject to criminal prosecution.

OTHER PROVISIONS

10. Buzz Transport and Rhymaun acknowledge the following:
 - a. Buzz Transport and Rhymaun warrant that they have reviewed Buzz Transport's financial situation and 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 its payment to the State of the Settlement Amount.
 - b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Buzz Transport and/or Rhymaun, 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 contemporaneous exchange.
 - c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to and do, in fact, represent a reasonably equivalent exchange of value.

- d. The Parties do not intend to hinder, delay, or defraud any entity to which Buzz Transport and/or Rhymaun was or became indebted to on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

11. If within ninety-one (91) days of the date of this Agreement or any payment made under this Agreement, Buzz Transport and/or Rhymaun commence 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 Buzz Transport and/or Rhymaun's debts, or seeking to adjudicate Buzz Transport or Rhymaun as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for all or part of any of Buzz Transport and Rhymaun's, Buzz Transport and Rhymaun agree as follows:

- a. The obligations of Buzz Transport and Rhymaun under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and they shall not argue or otherwise take the position in any such case, action, or proceeding that (i) their obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) they were insolvent at the time this Agreement was entered into, or became insolvent as a result of payments made to the State pursuant to this Agreement; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Buzz Transport and Rhymaun.
- b. If the obligations of Buzz Transport and Rhymaun 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, the State, at its option, may rescind the releases in this Agreement and bring any civil and/or administrative

claim, action, or proceeding against Buzz Transport and Rhymaun for the claims that would otherwise be covered by the releases in Paragraph 10 above. Buzz Transport and Rhymaun agree that (i) any such claim, action, or proceeding brought by 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 Buzz Transport and Rhymaun shall not argue or otherwise contend that the State’s claim, action, or proceeding is subject to an automatic stay; (ii) Buzz Transport and Rhymaun 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 State within 60 calendar days of written notification to Buzz Transport and Rhymaun that the releases have been rescinded pursuant to this Paragraph; and (iii) the State has a valid, noncontingent claim against Buzz Transport and Rhymaun in the amount of Three Hundred Sixty-Three Thousand Nine Hundred Ninety-Five Dollars (\$363,995.00), less any payments made, and 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. Buzz Transport and Rhymaun acknowledge that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

12. Buzz Transport and Rhymaun 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. §§ 1395-1395kkk and 1396-1396w-5; and the regulations

and official program directives promulgated thereunder) incurred by or on behalf of Buzz Transport and Rhymaun or any of their present or former officers, directors, trustees, employees, shareholders, and agents in connection with:

- i. the matters covered by this Agreement;
 - ii. the State's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
 - iii. Buzz Transport and Rhymaun's investigation, defense, and corrective actions undertaken in response to the State's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
 - iv. the negotiation and performance of this Agreement; and
 - v. the payments Buzz Transport and Rhymaun made relating to this Agreement including costs and attorney's fees, are unallowable costs for government contracting purposes and under the Medicaid Program (hereinafter referred to as "Unallowable Costs").
- b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by Buzz Transport and Rhymaun and Buzz Transport and Rhymaun 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 Consolidated Fiscal Report ("CFR"), cost report, cost statement, information statement, or payment request submitted by either Buzz Transport or Rhymaun, or any of their affiliates to the Medicaid Programs.

- c) Treatment of Unallowable Costs Previously Submitted for Payment: Buzz Transport and Rhymaun further agree that within ninety (90) days of the Effective Date of this Agreement, they shall identify to applicable Medicaid fiscal agents, any Unallowable Costs (as defined in Paragraph 9(a)) included in payments previously sought from 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 Buzz Transport and/or Rhymaun or any 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. Buzz Transport and Rhymaun agree that the State, at a minimum, shall be entitled to recoup from Buzz Transport and/or Rhymaun 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, appeals, or requests for payment. Any payments due after the adjustments have been made shall be paid to the State. The State reserves its rights to disagree with any calculations submitted by Buzz Transport and/or Rhymaun or any of their affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Buzz Transport's and/or Rhymaun's or any of their affiliates' CFRs, cost reports, cost statements, or information reports, appeals, or other payment requests.
- d) Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine the books and records of Buzz Transport and Rhymaun to determine that no Unallowable Costs have been claimed in accordance

with the provisions of this Paragraph.

13. This Agreement is binding on Buzz Transport's and/or Rhymaun's successors, transferees, heirs, and assigns.

14. This Agreement constitutes the complete and full agreement between the Parties with respect to this matter, and it may not be changed in any respect, except by a writing duly executed by the Parties or their authorized representatives.

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

16. This Agreement is intended 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 23 (waiver for beneficiaries).

17. Buzz Transport agrees that it waives and shall not seek payment for any of the billings based upon claims defined as Covered Conduct from any individual health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

18. Buzz Transport and Rhymaun agree not to submit any further claim or to resubmit to any state payor any previously denied claims, or cause any further claim or adjustment to be submitted or resubmitted, related to the Covered Conduct, and agree not to appeal any such denials of claims.

19. Buzz Transport and Rhymaun waive any claim for any tax rebate or refund, or other governmental payment, from the State, until the Settlement Amount is satisfied. In the State's sole discretion, the State may recoup or offset any such payment without further notice to Buzz Transport and/or Rhymaun for credit toward the Settlement Amount.

20. Buzz Transport and/or Rhymaun agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or

creating the impression that this Agreement is without factual basis. Nothing in this Paragraph affects Buzz Transport's and/or Rhymaun's: (a) testimonial obligations, or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.

21. All payments due to the State hereunder shall be made by certified check, bank check, money order, or wire transfer payable to the "New York State Medicaid Fraud Control Unit Restitution Fund." All non-electronic payments shall be delivered to the Medicaid Fraud Control Unit, Finance Department, 13th Floor, 28 Liberty Street, New York, New York 10005.

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

a) IF TO THE STATE:

New York State Attorney General
Medicaid Fraud Control Unit
Attn: Chief of Civil Enforcement
28 Liberty Street
New York, NY 10005
MFCUNotices@ag.ny.gov

b) IF TO BUZZ TRANSPORT and RHYMAUN:

James Kleinbaum, Esq.
Attorney At Law P.C.
18 Park Row
Chatham, NY 12037
James@Kleinbaumlaw.com

23. The effective date of this Agreement shall be the date of the signature of the last signatory to this Agreement ("Effective Date").

24. This Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

25. Buzz Transport and Rhymaun acknowledge that they have entered this Agreement freely, voluntarily, and upon due deliberation, with the advice of counsel and without coercion or duress.

26. Rhymaun acknowledges that he understands the terms and conditions of this Agreement, which he has read completely and discussed with his undersigned counsel.

27. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles. The Parties consent to the jurisdiction of the Supreme Court of the State of New York, Albany County, and any other county in which Buzz Transport conducts business, in any action brought by the State to enforce or interpret this Agreement.

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

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

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

WHEREFORE, the Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their signature.

STIPULATED AND AGREED TO:

LETITIA JAMES
Attorney General for the State of New York

Dated: Jan. 8, 2025

By: Emily Auletta
Emily L. Auletta
Special Assistant Attorney General
Medicaid Fraud Control Unit
The Capitol
Albany, New York 12224

Dated: 1/8, 2025

By: [Signature]
RANDOLPH RHYMAUN
Individually and as owner/operator of Buzz Transport LLC

Sworn to before me
this 8 day of January, 2025

NOTARY PUBLIC

Approved as to Form

By: [Signature]
James Kleinbaum
Attorney At Law P.C.
18 Park Row
Chatham, NY 12037
As Attorney for Buzz Transport LLC & Randolph Rhymaun