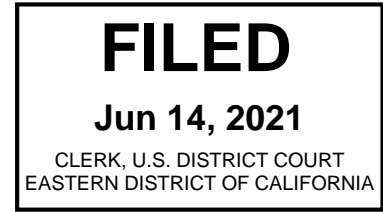


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7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA, *ex rel.*,
12 KRISTINE DAVENPORT,

13 Plaintiff,

14 v.

15 PLUM HEALTHCARE GROUP, LLC AND
16 MCKINLEY PARK CARE CENTER,

17 Defendants.
18
19

CASE NO. 2:16-CV-2670-TLN-CKD

UNITED STATES' NOTICE OF ELECTION TO
INTERVENE AGAINST ALL DEFENDANTS

[FILED UNDER SEAL]

20 Pursuant to the False Claims Act ("FCA"), 31 U.S.C. § 3730(b)(4)(B), the United States hereby
21 notifies the Court of its election to intervene in this action for settlement purposes against Defendants
22 Plum Healthcare Group, LLC and McKinley Park Care Center. Pursuant to the terms of the settlement
23 agreement filed herewith, the Parties intend to file a joint stipulation of dismissal of this action upon full
24 payment of the settlement amount by the Defendants.

25 The United States requests that the relator's Complaint, the Amended Complaint, this Notice,
26 and the attached settlement agreement and proposed Order be unsealed. The United States requests that
27 all other papers on file in this action remain under seal because, in discussing the content and extent of
28 the United States' investigation, such papers are provided by law to the Court alone for the sole purpose

1 of evaluating whether the seal and time for making an election to intervene should be extended.

2 A proposed Order accompanies this Notice.

3 DATED: June 9, 2021

Respectfully submitted,

4 PHILLIP A. TALBERT
5 Acting United States Attorney

6 By: /s/ Colleen M. Kennedy
7 COLLEEN M. KENNEDY
8 STEVEN S. TENNYSON
9 Assistant United States Attorneys

ATTACHMENT

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Attorney’s Office for the Eastern District of California, and on behalf of the Office of Inspector General of the Department of Health and Human Services (OIG-HHS) (collectively, the “United States”), Plum Healthcare Group, LLC (“Plum”), Azalea Holdings, LLC, dba McKinley Park Care Center (“MPCC”) (collectively “Defendants”), and Kristine Davenport (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

- A. Defendants are principally based in California.
- B. On January 26, 2017, Relator filed a *qui tam* action in the United States District Court for the District of Eastern District of California captioned *United States ex rel. Davenport v. Plum Healthcare Group, LLC, et al.*, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“the Civil Action”). Relator alleged, *inter alia*, that Defendants submitted false claims to government healthcare programs for services that were not actually rendered or were not medically necessary.
- C. The United States contends that it has certain civil claims against Defendants for submitting or causing to be submitted false claims for payment to the Medicare Program, in violation of the False Claims Act, 31 U.S.C. § 3729 *et seq.*
- D. Specifically, the United States contends that, during the period from June 18, 2012 through October 26, 2015, Defendants, through their employee, knowingly created billing records for residents at MPCC to reflect therapy services not actually provided (or to exaggerate the extent of therapy services provided), and then submitted false claims to Medicare Part A for those residents at an inflated Resource Utilization Group (“RUG”) level. Defendants’ false

entries led them to obtain Medicare reimbursements that were higher than warranted (the “Overpayments”). Defendants knew they obtained the Overpayments because internal reports informed Defendants’ management about the scope and extent of the Overpayments. After being informed of the scope of the Overpayments, Defendants failed to conduct an adequate investigation. Defendants conducted an audit of medical records covering a limited period, which did not encompass the full period during which the employee had created the false billing records. Defendants submitted a refund to Medicare based on less than the full period of misconduct, and without disclosing that the Overpayments resulted from the conduct described above.

This Paragraph D is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by Defendants nor a concession by the United States that its claims are not well founded.

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

TERMS AND CONDITIONS

1. Defendants shall pay to the United States a total of \$451,439.00 (“Settlement Amount”), of which \$213,549 is restitution, no later than 30 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 Eastern District of California.

2. Conditioned upon the United States receiving full payment of the Settlement Amount and within a reasonable time after receipt, the United States shall pay \$90,287.80 to Relator by electronic funds transfer (“Relator’s Share”).

3. Relator and her counsel Wilcoxon Callahan, LLP have claims for their attorney’s fees and costs incurred in the prosecution of this action (the “Fees Claim”), evidence of which has been presented to the Defendants. In addition, Relator has asserted a retaliation claim under 31 U.S.C. § 3730(h) (the “3730(h) Claim”) against Plum. The Fees Claim and Relator’s 3730(h) Claim are not released herein. Should the parties be unable to resolve the Fees Claim or the 3730(h) Claim, then the United States District Court shall have continuing jurisdiction over both the Fees Claim and the 3730(h) Claim.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and upon the United States’ receipt of the Settlement Amount, the United States releases Defendants together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; 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.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States’ receipt of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Defendants 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.

6. Notwithstanding the releases given in Paragraph 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. 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.

7. Relator and her 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 her 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. Defendants waive and shall not assert any defenses Defendants 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. Defendants 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 Defendants 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. With regard to the release set forth in this Paragraph, Defendants hereby expressly waive all rights they may have by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

10. 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) or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

11. Defendants 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 Defendants, their 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) Defendants' 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 Defendants make to the United States pursuant to this Agreement and any payments that Defendants 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).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Defendants, and Defendants 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 Defendants to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they 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 Defendants, 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.

Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants 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 Defendants on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Defendants' 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 Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

12. 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 13 (waiver for beneficiaries paragraph), below.

13. Defendants 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.

14. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). The Civil Action will be dismissed as to Defendants with prejudice as to the Relator (except for the Fees Claim and 3730(h) Claim), but as to the United States with prejudice only as to the Covered Conduct.

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

17. 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 Eastern 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.

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

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

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

21. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

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

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

24. 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.

THE UNITED STATES OF AMERICA


PHILLIP A. TALBERT
Acting United States Attorney

DATED: _____

BY: COLLEEN KENNEDY  Digitally signed by COLLEEN KENNEDY
Date: 2021.06.04 14:57:37 -07'00'

Colleen M. Kennedy
Steven S. Tennyson
Assistant United States Attorney
Eastern District of California


DATED: 5/27/2021

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

PLUM HEALTHCARE GROUP LLC and AZALEA HOLDINGS, LLC, DBA MCKINLEY PARK CARE CENTER

DATED: 05/24/2021

BY: 
Cory Christensen, Chief Executive Officer
Plum Healthcare Group LLC

DATED: _____

BY: _____
Jared Bake, Administrator
Azalea Holdings, LLC, dba McKinley Park Care Center

DATED: _____

BY: _____
Shireen Matthews
Laura F. Laemmle-Weidenfeld
JONES DAY
Counsel for Plum Healthcare Group LLC and McKinley Park Care Center LLC

THE UNITED STATES OF AMERICA


PHILLIP A. TALBERT
Acting United States Attorney

DATED: _____ BY: _____
Colleen M. Kennedy
Steven S. Tennyson
Assistant United States Attorney
Eastern District of California

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

**PLUM HEALTHCARE GROUP LLC and AZALEA
HOLDINGS, LLC, DBA MCKINLEY PARK CARE
CENTER**

DATED: _____ BY: _____
Cory Christensen, Chief Executive Officer
Plum Healthcare Group LLC

DATED: 5/19/21 BY: 
Jared Bake, Administrator
Azalea Holdings, LLC, dba McKinley Park Care Center

DATED: _____ BY: _____
Shireen Matthews
Laura F. Laemmle-Weidenfeld
JONES DAY
Counsel for Plum Healthcare Group LLC and McKinley
Park Care Center LLC

THE UNITED STATES OF AMERICA

PHILLIP A. TALBERT
Acting United States Attorney

DATED: _____

BY: _____

Colleen M. Kennedy
Steven S. Tennyson
Assistant United States Attorney
Eastern District of California

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

**PLUM HEALTHCARE GROUP LLC and AZALEA
HOLDINGS, LLC, DBA MCKINLEY PARK CARE
CENTER**

DATED: _____

BY: _____


Cory Christensen, Chief Executive Officer
Plum Healthcare Group LLC

DATED: _____

BY: _____

Jared Bake, Administrator
Azalea Holdings, LLC, dba McKinley Park Care Center


DATED: 5/24/2021

BY:  _____

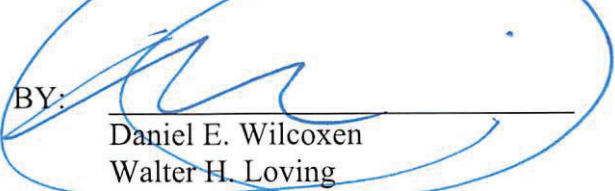
Shireen Matthews
Laura F. Laemmle-Weidenfeld
JONES DAY
Counsel for Plum Healthcare Group LLC and McKinley
Park Care Center LLC

RELATOR

DATED: 05/07/2021

BY: 
Kristine Davenport

DATED: 5/17/21

BY: 
Daniel E. Wilcoxon
Walter H. Loving
Martha A. Taylor
Wilcoxon Callaham, LLP
Counsel for Relator