

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among 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), (collectively, the “United States”), the State of Georgia (the “State”) American Health Imaging, Inc. (“American Health Imaging”), Scott Arant (“Mr. Arant”) (collectively, “Defendants”), and Tanya Benjamin (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. During the time-period at issue, American Health Imaging operated a chain of Independent Diagnostic Testing facilities, owned in part by Scott Arant.

B. On September 15, 2015, Tanya Benjamin filed a *qui tam* action in the United States District Court for the Northern District of Georgia captioned *United States ex rel. Benjamin v. Scott W. Arant, et al.*, Civil Action No. 1:15-cv-3242 (N.D. Ga.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) and the Georgia False Medicaid Claims Act, O.C.G.A. §§ 49-4-168, et al. (the “Civil Action”).

C. The United States and the State contend that Defendants submitted or caused to be submitted claims for payment to: the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395III (“Medicare”); and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

D. The United States and the State contend that they have certain civil claims against Defendants arising from the following conduct, by which Defendants knowingly submitted or caused the submission of false or fraudulent claims to Medicare and Medicaid from January 1, 2011 through September 15, 2019:

(1) Defendants paid various forms of remuneration to referring physicians in the form of meals, entertainment, gifts, and marketing activities to induce those physicians to refer patients for diagnostic scans to American Health Imaging's Independent Diagnostic Testing facilities in violation of the Anti-Kickback Statute (the "AKS"), 42 U.S.C. § 1320a-7b(b)(2).

(2) Defendants paid remuneration to certain physicians in the form of above fair-market-value payments through personal services agreements to induce those physicians to refer patients for diagnostic scans to American Health Imaging's Independent Diagnostic Testing facilities in violation of the AKS.

Therefore, between January 1, 2011 and September 15, 2019, Defendants knowingly caused the submission of false or fraudulent claims to Medicare and Georgia Medicaid for diagnostic imaging studies tainted by violations of the AKS.

That conduct 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 and the State that their claims are not well founded. Defendants deny the allegations in Paragraph D and its subparts.

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 five million two-hundred and fifty thousand dollars (\$5,250,000) (the "Settlement Amount"), of which \$2,468,697, is restitution. Defendants shall make this payment no later than 14 days after the Effective Date of this

Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Northern District of Georgia.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$892,500 to Relator by electronic funds transfer (Relator's Share). The Relator's Share shall be paid by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel.

3. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States and the State release Defendants, together with their current and former divisions, affiliates, direct and indirect subsidiaries, predecessor and successor corporations, parent companies, and current or former corporate owners from any civil or administrative monetary claim the United States and the State have 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; the Georgia False Medicaid Claims Act, O.C.G.A. §§ 49-4-168; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. 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, together with their current or former owners, subsidiaries, affiliates, officers, directors, employees, agents, shareholders, and attorneys, and the heirs, representatives, family members, successors and assigns of any of them, from any claims for relief, actions, rights, causes of action, suits, debts, obligations, liabilities, demands, losses, damages, costs and expenses of any kind, whether known or unknown as of the Effective Date of this Agreement that Relator has, may have, could have asserted, or may assert in the future on her behalf or on behalf of the United States or any state or local government or sovereign or on behalf of any other person or

entity, including but not limited to any claim relating in any way to the Covered Conduct, the allegations of the Civil Action, her employment with Defendants or termination thereof, the filing of the Civil Action, the investigation and prosecution of this matter, or the negotiation of this Agreement, including all liability, claims, demands, actions or causes of action existing as of the Effective Date of this Agreement, fixed or contingent, in law or in equity, in contract or in tort, or under any federal or state statute, regulation, or common law. Relator agrees to withdraw any and all claims, filings, lawsuits, complaints, or grievances filed in any forum concerning Defendants, including, without limitation, any claim for recovery of attorney's fees or expenses or any claims for retaliation under 31 U.S.C. § 3730, O.C.G.A. §§ 49-4-168.2, or any other law. The release in this paragraph does not apply to Relator's and relator's counsel (Moss & Gilmore LLP) claims for reasonable costs and attorney's fees under 31 U.S.C. § 3730(d) which will be addressed in a separate agreement to be executed contemporaneously herewith by the Relator, Relators' counsel and the Defendants.

5. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Defendants, and their 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.

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

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) or the Georgia Revenue and Taxation Code, O.C.G.A. 48-1-1, et seq.;
- 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) or to the State of Georgia (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, except as expressly described in this Agreement;
- g. Any civil or administrative liability that any person or entity, including any released entities, has or may have to the State of Georgia or to individual consumers or state program payors under any statute, regulation, or rule not expressly covered by releases above, including but not limited to, any and all of the following claims: (i) State of Georgia or federal antitrust violations; (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws.

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) and O.C.G.A. 49-4-168.2. 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 and the State, and their agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730 or O.C.G.A. 49-4-168.2, 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 and the State, and their 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 and the State, and their agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' and the State's investigation or prosecution thereof.

10. Defendants fully and finally release the Relator 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 Relator, related to the Civil Action and the Relator's investigation and prosecution thereof or related to Relator's employment with Defendants.

11. 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.

12. 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, and their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and the State's audit and civil investigation of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' and the State's audit and civil investigation 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, under this Agreement, 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 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 or any of their subsidiaries or affiliates 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 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. Defendants agree that the United States and the State, 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 and the State pursuant to the direction of the Department of Justice and/or the affected agencies. The United States and the State reserve their rights to disagree with any calculations submitted by Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Defendants or any of their 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 Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

13. Defendants agree to cooperate fully and truthfully with the United States' and the State's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their 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. Defendants further agree to furnish to the United States and the State, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has 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 21 (waiver for beneficiaries paragraph), below.

15. 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.

16. Upon receipt of the payment described in Paragraph 1 above, and in the case of Relator, receipt of payment from Defendants for costs and attorney's fees under 31 U.S.C. § 3730(d), 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) as follows:

(a) As to Relator Benjamin, the Stipulation of Dismissal shall be with prejudice as to all claims asserted in the Civil Action, including all claims asserted on behalf of the United States and the State against Defendants as to the Covered Conduct, all other claims asserted on

behalf of the United States, the State, or any other state that were asserted against any defendant named in the Civil Action, and any personal claims, including any claim for retaliation pursuant to 31 U.S.C. § 3730(h) and O.C.G.A. § 49-4-168.4 and any claim for recovery of attorney's fees, costs, and expenses under 31 U.S.C. § 3730(d) or O.C.G.A. § 49-4-168.2(i).

(b) As to the United States and the State, the Stipulation of Dismissal shall be with prejudice as to the United States' and the State's claims against Defendants as to the Covered Conduct, pursuant to and consistent with the terms and conditions of this Agreement, and without prejudice as to all other claims against American Health Imaging, Mr. Arant and all other defendants named in the Civil Action.

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.

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 Northern District of Georgia. 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.

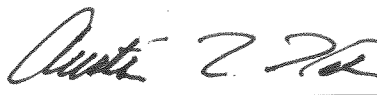
23. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

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

25. All Parties consent to the United States' and the State's 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.

The United States of America

DATED: 10/1/2024 BY: 
Austin M. Hall
Assistant United States Attorney
Northern District of Georgia

DATED: _____ BY: _____
Susan E. Gillin
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

The State of Georgia

DATED: _____ BY: _____
Melanie Simon
Georgia Department of Community Health

DATED: _____ BY: _____
Jim Mooney
Senior Assistant Attorney General
Georgia Department of Law

23. This Agreement is binding on Defendants' 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' and the State's 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.

The United States of America

DATED: _____

BY: _____
Austin M. Hall
Assistant United States Attorney
Northern District of Georgia

DATED: 09/30/24

BY: **SUSAN GILLIN**
Susan E. Gillin
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

Digitally signed by SUSAN GILLIN
Date: 2024.09.30 12:26:15
+04'00'

The State of Georgia

DATED: _____

BY: _____
Melanie Simon
Georgia Department of Community Health

DATED: _____

BY: _____
Jim Mooney
Senior Assistant Attorney General
Georgia Department of Law

23. This Agreement is binding on Defendants' 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' and the State's 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.

The United States of America

DATED: _____

BY: _____
Austin M. Hall
Assistant United States Attorney
Northern District of Georgia

DATED: _____

BY: _____
Susan E. Gillin
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

The State of Georgia

DATED: 9/24/2024

BY: Melanie Simon
Melanie Simon
Georgia Department of Community Health

DATED: _____

BY: _____
Jim Mooney
Senior Assistant Attorney General
Georgia Department of Law

23. This Agreement is binding on Defendants' 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' and the State's 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.

The United States of America

DATED: _____

BY: _____
Austin M. Hall
Assistant United States Attorney
Northern District of Georgia

DATED: _____

BY: _____
Susan E. Gillin
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

The State of Georgia

DATED: _____

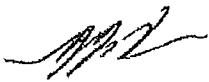
BY: _____
Melanie Simon
Georgia Department of Community Health

DATED: 10/2/2024

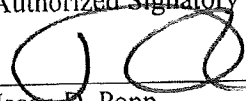
BY: Jim Mooney/wep SV
Jim Mooney
Senior Assistant Attorney General
Georgia Department of Law

American Health Imaging, Inc.

DATED: 9/30/24

BY: 
Lee Cooper
Authorized Signatory

DATED: 9/30/24

BY: 
Jason D. Popp
Alston & Bird LLP
Counsel for American Health Imaging, Inc.

Scott Arant

DATED: _____

BY: _____
Scott Arant

DATED: _____

BY: _____
Daniel D. Zegura
Smith, Gambrell & Russell, LLP
Counsel for Scott Arant

Tanya Benjamin - Relator

DATED: _____

BY: _____
Tanya Benjamin

DATED: _____

BY: _____
Raymond L. Moss
Moss & Gilmore LLP
Counsel for Tanya Benjamin

American Health Imaging, Inc.

DATED: _____

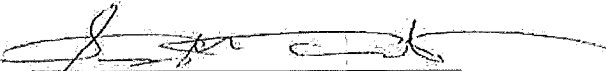
BY: _____
Lee Cooper
Authorized Signatory

DATED: _____

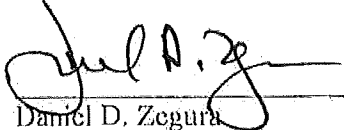
BY: _____
Jason D. Popp
Alston & Bird LLP
Counsel for American Health Imaging, Inc.

Scott Arant

DATED: 9/30/24

BY: 
Scott Arant

DATED: 9/30/24

BY:  as to form
Daniel D. Zegura
Smith, Gambrell & Russell, LLP
Counsel for Scott Arant

Tanya Benjamin - Relator

DATED: _____

BY: _____
Tanya Benjamin

DATED: _____

BY: _____
Raymond L. Moss
Moss & Gilmore LLP
Counsel for Tanya Benjamin

American Health Imaging, Inc.

DATED: _____

BY: _____
Lee Cooper
Authorized Signatory

DATED: _____

BY: _____
Jason D. Popp
Alston & Bird LLP
Counsel for American Health Imaging, Inc.

Scott Arant

DATED: _____

BY: _____
Scott Arant

DATED: _____

BY: _____
Daniel D. Zegura
Smith, Gambrell & Russell, LLP
Counsel for Scott Arant

Tanya Benjamin - Relator

DATED: 9-26-2024 BY: Tanya Benjamin
Tanya Benjamin

DATED: 9-26-2024 BY: Raymond L. Moss
Raymond L. Moss
Moss & Gilmore LLP
Counsel for Tanya Benjamin