

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 United States Postal Service (“USPS”) (collectively the “United States”); defendants MJH Healthcare Holdings, LLC, its subsidiary MJH Life Sciences, LLC, and the following affiliates of MJH Life Sciences, LLC – Intellisphere, LLC; Clinical Targeted Communications Group, LLC; Managed Care & Healthcare Communications, LLC; Pharmacy & Healthcare Communications, LLC; Cure Media Group, LLC; Cure Communications, LLC; MJH Associates, Inc. a/k/a Michael J. Hennessey and Associates, Inc.; Multimedia Healthcare Communications, LLC; MJH Acquisitions, LLC; MJH Shared Services, LLC; and MJH Studio, LLC (defendants are, collectively, “MJH Parties”); and the relator, John Burke (“Burke” or “Relator”), through their authorized representatives. The United States, the MJH Parties and Burke are hereafter collectively referred to as the “Parties.”

RECITALS

A. The MJH Parties are privately-held medical communication and education providers based in Cranbury, New Jersey that, among other businesses, publish educational and promotional materials aimed at patients and healthcare providers. Among their publications are *Cure*, *Targeted Therapeutics in Oncology* (“TTO”), *American Journal of Managed Care* (“AJMC”), *Medical Economics*, *Oncology Live*, and *Drug Topics*.

B. On or about December 16, 2022, Burke filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel.*

John Burke v. MJH Healthcare Holdings, LLC, et al. pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The Relator alleged, *inter alia*, that since at least 2017, the MJH Parties had mailed certain of their publications at discounted periodicals postage rates to which they were not entitled.

C. The United States contends that it has certain civil claims against the MJH Parties arising from postage misclassification by the MJH Parties with respect to mailings of certain MJH Parties’ medical publications: *Cure*, *TTO*, *AJMC*, *Medical Economics*, *Oncology Live*, and *Drug Topics*. More specifically, when sending eleven mailings of *Cure* (October 2021; March 2022; June 2022; September 2022; December 2022; March 2023; June 2023; September 2023; December 2023; March 2024; and June 2024); seventeen mailings of *TTO* (May 2022; June 2022; July 1, 2022; July 2, 2022; August 2022; December 1, 2022; December 2, 2022; January 2023; February 2023; March 1, 2023; March 2, 2023; April 1, 2023; April 2, 2023; May 2023; June 2023; July 1, 2023; and July 2, 2023); four mailings of *AJMC* (May 2022; June 2022; December 2022; and February 2023); three mailings of *Medical Economics* (June 2022; August 2022; and October 2022); four mailings of *Oncology Live* (July 5, 2022; July 19, 2022; August 3, 2022; and August 18, 2022); and one mailing of *Drug Topics* (July 2022), the MJH Parties calculated the postage they paid based on the periodicals postage rate, which is only available for publications of which more than 50% of mailed issues have been requested, but they did not qualify for the periodicals rate for those mailings.

In calculating the percentage of these issues that were requested by the addressee, the MJH Parties knowingly (as defined in 31 U.S.C. § 3729(b)(1)) certified figures to the United States that were inaccurate in two ways. First, for the *Cure* mailings listed in the

preceding paragraph and *TTO* mailings between December 1, 2022 and July 2, 2023, the MJH Parties included lists of recipients as requesters that they had received from third-party sources that did not qualify the listed individuals to be requesters under the USPS Domestic Mail Manual (“DMM”). Second, the DMM requires that requests be less than three years old. During the COVID-19 pandemic, the USPS allowed publishers to count requests that would have expired due to age after January 15, 2020. However, it discontinued the COVID-19 suspension of requests aging-out between late 2021 and early 2022. For *TTO* mailings between May and August 2022 and the mailings of *AJMC*, *Medical Economics*, *Oncology Live*, and *Drug Topics* listed in the preceding paragraph, the MJH Parties continued to treat this aging-out of requests as suspended despite the USPS having ended its COVID-19 exception to the DMM requirement.

As a result, each of the above-listed mailings had been requested by less than 50% of its recipients, and the MJH Parties should not have certified to the United States that its requester figures and postal rates for those issues were accurate. For those issues, the MJH Parties should have paid postage at the higher marketing mail flats rate. Because the MJH Parties treated these publications as periodicals, the United States received less postage than it would have had these publications been properly classified at the marketing mail flats rate. The conduct discussed in this recital paragraph C is referred to below as the Covered Conduct.

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

E. 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. The MJH Parties shall pay to the United States Two Million Six Thousand Four Hundred and Twenty Four Dollars (\$2,006,424) ("Settlement Amount"), of which \$1,003,212 is restitution, plus interest on the Settlement Amount at a rate of 4.25% per annum from March 19, 2025 until paid in full, by electronic funds transfer no later than 15 days after the Effective Date of this Agreement pursuant to written instructions to be provided by the United States Department of Justice.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$341,092 to Relator (17 percent of the Settlement Amount), plus a proportional share of accrued interest paid, by electronic funds transfer ("Relator's Share").

3. Within 30 days of the Effective Date, the MJH Parties shall pay to the Relator \$300,000 in attorneys' fees and costs, by electronic funds transfer pursuant to written instructions to be provided by counsel for Relator.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount and interest due under Paragraph 1, the United States releases the MJH Parties, 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, 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 himself and for his heirs, successors, attorneys, agents, and assigns, releases all of the entities named in the Civil Action, i.e. the MJH Parties, 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 and all manner of claims, proceedings, liens and causes of action of any kind or description that Relator has against them, including 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 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 the Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

Conditioned upon Relator's receipt of the Relator's Share, described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Conditioned upon Relator's receipt of the attorney's fees and costs described in Paragraph 3, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases the MJH Parties, 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, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

9. The MJH Parties waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. The MJH Parties 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 they 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.

11. The MJH Parties fully and finally release Relator, his heirs, successors, attorneys, agents, and assigns from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that they have asserted, could have

asserted, or may assert in the future against Relator his heirs, successors, attorneys, agents, and assigns, for any claims arising from or relating to the filing of the Civil Action, the United States' investigation or prosecution thereof, or the Covered Conduct.

12.

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of the MJH Parties 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 MJH Parties' 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;
- (5) the payment the MJH Parties make to the United States pursuant to this Agreement and any payments that the MJH Parties may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by the MJH Parties, and they shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, the MJH Parties, shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by them or any of their subsidiaries or affiliates from the United States. The MJH Parties, agree that the United States, at a minimum, shall be entitled to recoup from them any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine their books and records and to disagree with any calculations submitted by the MJH Parties regarding any Unallowable Costs included in payments previously sought by them, or the effect of any such Unallowable Costs on the amount of such payments.

13. The MJH Parties agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, the MJH Parties 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. They 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 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.

15. Upon receipt of the payment described in Paragraph 1, above, the United States and Relator, pursuant to Rule 41(a)(1), shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action. Dismissal shall be with prejudice to the Relator, and with prejudice to the United States as to the Covered Conduct, but otherwise without prejudice to the United States.

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

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

18. 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.

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

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

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

22. This Agreement is binding on the MJH Parties' successors, transferees, heirs, and assigns.

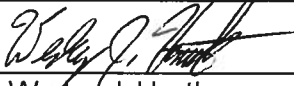
23. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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


25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: April 15, 2025

BY: 
Wesley J. Heath
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

Alina Habba
United States Attorney


Paul Kaufman
Assistant United States Attorney
District of New Jersey

DEFENDANTS

DATED: _____ BY: _____
MJH Parties

DATED: _____ BY: _____
Mark Salah Morgan
Stephen Reynolds
Day Pitney LLP
Counsel for MJH Parties

THE UNITED STATES OF AMERICA

DATED: _____ BY: _____

Wesley J. Heath
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

Alina Habba
United States Attorney

Paul Kaufman
Assistant United States Attorney
District of New Jersey

DEFENDANTS

DATED: 4/14/2025 BY: _____
DocuSigned by:
MJH Parties

DATED: 4/15/2025 BY: _____
Mark Salah Morgan
Stephen Reynolds
Day Pitney LLP
Counsel for MJH Parties

RELATOR

DATED: April 13, 2025 BY: John L. Burke
John Burke

DATED: April 13, 2025 BY: J. Abay
Jeremy Abay
Lichten & Liss-Riordan, P.C.
Counsel for Relator John Burke

DATED: April 12, 2025 BY: Marc S. Raspanti
Marc Raspanti
Pietragallo Gordon Alfano Bosick & Raspanti, LLP
Counsel for Relator John Burke