

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice (the “United States”), Public Consulting Group LLC (“PCG”), and Shane Shackford, Psy. D. (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. PCG is headquartered in Boston, Massachusetts and provides consulting and operational services for public sector health, education, and human service agencies and authorities. As it relates to this Agreement, PCG, pursuant to a contract with the State of New Jersey, provided administrative support for New Jersey’s Special Education Medicaid Initiative (“SEMI”) program.

B. On or about April 23, 2012, Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel. Shane Shackford v. Public Consulting Group, Inc., et al.*, Civil Action No. 12-2437, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleged that PCG and various New Jersey school districts made or caused to be made false claims in connection with the State of New Jersey’s Special Education Medicaid Initiative (the “SEMI program”). More specifically, Relator alleged that PCG caused local school districts to submit claims to the Centers for Medicare and Medicaid Services (“CMS”) for evaluation services that PCG knew or should have known were not covered by Medicaid.



C. The United States contends that PCG submitted or caused to be submitted claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

D. The United States contends that it has common law claims against PCG, specifically, for payment by mistake, arising from evaluation service claims submitted by or for New Jersey school districts under the SEMI program during the period from April 23, 2006 through the date of this Settlement Agreement. That conduct is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by PCG 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. This Settlement resolves in full any claim by Relator to 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. PCG shall pay to the United States two million five hundred thousand dollars (\$2,500,000) (Settlement Amount), and interest on the Settlement Amount at a rate of 2% per annum from September 8, 2022, of which two million five hundred thousand (\$2,500,000) is restitution, 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 District of New Jersey.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay to Relator (i) 21% (twenty-one percent) of the Settlement Amount paid by PCG and (ii) 21% (twenty-one percent) of any interest paid pursuant to Paragraph 1, above, by electronic funds transfer (Relator's Share). Payment shall be made to an attorney trust account designated by Relator's counsel.

3. Within 14 days of the Effective Date of this agreement, PCG shall pay to Relator two hundred and seventy-five thousand dollars (\$275,000.00) for expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d). Immediately upon execution of this agreement, Relator shall provide wire instructions to PCG in order to effectuate this payment.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases PCG, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate predecessors, successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the common law theory of payment by mistake, or any other common law theory based on the Covered Conduct.

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5. Upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1 and Relator's receipt of the payment of attorney's fees due under Paragraph 3, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases, discharges, remises and dismisses PCG, together with its current and former parent companies; direct and indirect subsidiaries; brother or sister companies; divisions; current or former corporate owners; and the corporate predecessors, successors and assigns of any of them; and past and present employees, officers, directors, and agents (the "PCG Releasees") from any and all claims, demands, and causes of action, whether known or unknown, that are based in whole or in part on any act or omission prior to the Effective Date, including without limitation, any claim the Relator has on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733, and any other claim that Relator has or purports to have against the PCG Releasees on any basis, whether in contract, tort, or otherwise, asserted or unasserted, liquidated or unliquidated, at law or in equity and, for the avoidance of doubt, all claims that Relator asserted, could have asserted, or may assert in the future in or related to the Civil Action. The Relator also releases, discharges, remises, and dismisses all claims it asserted or could have asserted in the Complaint under the False Claims Act and/or relating to the allegations in the Civil Action against the other named defendants, against other New Jersey school districts, against other school districts identified or referenced in the Complaint, and against any states, government agencies, or other clients of PCG. This release includes, without limitation, any liability to Relator arising from the filing of the Civil Action, or for expenses or



attorneys' fees and costs under 31 U.S.C. § 3730(d) or any other basis on which Relator may purport to seek expenses, attorneys' fees and costs from PCG.

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 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;
- f. Any liability of individuals;
- g. Any liability under the False Claims Act, 31 U.S.C. §§ 3729-3733;
- h. Any liability under the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; or
- i. Any liability under the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812.



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, 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. Relator represents and warrants that only the law firm of Menz Bonner Komar & Koenigsberg, LLP represented him in connection with the Civil Action and that there are no other lawyers or law firms or other parties who purport to have a claim for attorneys' fees, costs, and/or expenses on behalf of Relator in connection with or related to the Civil Action and any investigation thereof. For the avoidance of doubt, this representation is a material term of this Agreement on which PCG is relying in entering into the Agreement.

9. PCG waives and shall not assert any defenses PCG 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. PCG fully and finally releases 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 PCG has 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. PCG fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that PCG has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct, the Civil Action and the Relator's and the United States' investigation and prosecution thereof.

12. 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 or Medicaid contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and PCG agrees not to resubmit on behalf of any school district or other entity to any Medicare or Medicaid 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.

13. PCG agrees 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 PCG, 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) PCG's 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 PCG makes to the United States pursuant to this Agreement and any payments that PCG may make to Relator, including costs and attorneys 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 as appropriate and applicable in nonreimbursable cost centers by PCG, and PCG 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



PCG or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: PCG 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 PCG 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. PCG agrees that the United States, at a minimum, shall be entitled to recoup from PCG 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 PCG or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on PCG 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 PCG's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

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 Paragraphs 4, 5, 7, 10 and 11 above, and Paragraph 15 (waiver for beneficiaries paragraph), below.

15. PCG agrees that it waives 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 the Civil Action in its entirety as against all defendants pursuant to Rule 41(a)(1).

17. 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.

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 PCG's 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.

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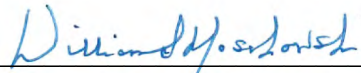
THE UNITED STATES OF AMERICA

Dated: 9/23/22

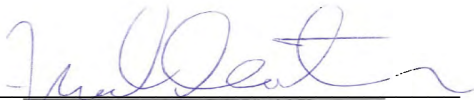
BY: 
David E. Dauheimer
Deputy Chief, Health Care Fraud Unit
David V. Simunovich
Assistant United States Attorney
United States Attorney's Office
District of New Jersey

PUBLIC CONSULTING GROUP LLC

Dated: 9/23/2022


BY: 
William S. Mosakowski
President & Chief Executive Officer
Public Consulting Group LLC

Dated: 9/20/2022


BY: 
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Counsel for Public Consulting Group LLC

SHANE SHACKFORD

Dated: 9/14/2022

BY: 
Shane Shackford, Psy. D.
Relator

Dated: 9/15/2022

BY: 
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