

**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA *et al. ex rel.* SANDRA
GAUCH *et al.*,

Plaintiffs and Relators,

-against-

LINCARE INC., *et al.*,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

-against-

LINCARE INC.,

Defendant.

18 Civ. 783 (PGG)

~~REDACTED~~ STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among (i) plaintiff the United States of America (the “Government” or “United States”), by its attorney, Damian Williams, the United States Attorney for the Southern District of New York, and on behalf of the Office of Inspector General for the Department of Health and Human Services (“OIG-HHS”), the Defense Health Agency (“DHA”), acting on behalf of the TRICARE program (“TRICARE”), and the Office of Personnel Management (“OPM”), which administers the Federal Employees Health Benefit Programs (“FEHBP”), and the National

Railroad Passenger Corporation d/b/a Amtrak (ii) the relators Sandra Gauch and Michelle McNeill (collectively, “Relators”), by their authorized representatives; and (iii) defendant Lincare Inc. (“Lincare” or “Defendant,” and collectively with the Government and Relators, the “Parties”), by its authorized representatives;

WHEREAS, Lincare is a company headquartered in Clearwater, Florida, that supplies durable medical equipment (“DME”), including respiratory equipment such as non-invasive ventilators (“NIVs”), to approximately 1 million patients across the United States;

WHEREAS, on or about January 29, 2018, Relators filed a complaint (the “Relator Complaint”) under the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, against Defendant alleging, *inter alia*, that Defendant violated the FCA, comparable state false claims laws, and the Anti-Kickback Statute (the “AKS”), 42 U.S.C. § 1320a-7b(b), by billing government healthcare programs like Medicare and Medicaid for rentals of NIVs that were not being used by patients, and by offering waivers of coinsurance payments as inducement to NIV patients;

WHEREAS, the United States alleges that, from January 1, 2013, to February 29, 2020 (the “Covered Period”), Lincare violated the FCA by knowingly submitting false claims for payment to Federal health care programs for NIV rentals: (i) when the NIVs were not medically necessary or reasonable due to the lack of continued use or continued need; (ii) when Lincare did not maintain sufficient documentation to show (or otherwise verify) continued use or continued need; or (iii) where Lincare approved, at the Regional Vice President-level, waivers of the coinsurance payments that Medicare and TRICARE beneficiaries were required to pay to induce the beneficiaries to rent the NIVs based on factors other than the patient’s financial need, in violation of the AKS and Lincare’s own applicable internal policies. The conduct described in this Paragraph is the “Covered Conduct” for purposes of this Stipulation.

WHEREAS, contemporaneous with the filing of this Stipulation, the Government is filing a Notice of Election to Intervene and a Complaint-In-Intervention in the above-referenced *qui tam* action (the “Government Complaint”), in which it asserts claims against Defendant under the FCA and common law for the Covered Conduct;

WHEREAS, Defendant intends to enter into separate settlement agreements (the “State Settlements”) with various states that participate in Medicaid (the “States”) – including all the states named as co-plaintiffs in the Relator Complaint – to resolve claims under state laws for the Covered Conduct, and has agreed to pay approximately \$1.27 million to the States pursuant to the State Settlements; and

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against Defendant in the Government Complaint and the Relator Complaint for the Covered Conduct;

NOW, THEREFORE, upon the Parties’ agreement, IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court’s exercise of personal jurisdiction over each of them.
2. Defendant admits, acknowledges and accepts responsibility for the following conduct:
 - a. Lincare is a DME supplier and operates approximately 700 local Lincare-operated locations, known as Centers, throughout the United States.
 - b. In 2015, Lincare targeted growth of its NIV business as a strategic imperative on account of, among other things, technological improvements with NIVs and expected reimbursement cuts by Medicare that would affect Lincare’s other business lines. During the Covered Period, the number of patients who rented Lincare’s NIVs increased substantially.
 - c. Lincare, through its local Centers, leased NIVs to a substantial number of patients covered by Federal health care programs pursuant to prescriptions written by physicians, and submitted claims to those programs to obtain

reimbursement for those NIV rentals. In Lincare's marketing to physicians, Lincare asserted that its clinical programs endeavored to offer clinical support to patients at least every sixty days through home visits to support patient progress and to ensure compliance with the physicians' prescriptions. Such prescriptions generally identify periods of the day the patients should use the NIVs, often noting that the patient should use the NIV while she or he slept at night.

- d. Federal health care programs maintain billing requirements for DME rental items like NIVs. Those requirements provide, as applicable here, that NIV rentals must be reasonable and medically necessary. In addition, DME suppliers like Lincare are not permitted to offer coinsurance payment waivers where one purpose of the waiver is to induce NIV orders or referrals. Lincare understood that claims submitted to Federal health care programs seeking reimbursement for NIV rentals must comply with these requirements.

Failure to Ensure All NIV Rentals Were Reasonable and Medically Necessary

- e. Lincare knew that patients needed to use their NIVs to receive the benefits of NIV therapy. Lincare also knew that it was responsible for monitoring the utilization of NIVs, and that Federal health care programs require providers to discontinue billing when rental items are no longer medically necessary and are no longer being used by beneficiaries.
- f. Lincare relied on Center clinical staff as well as outreach through its clinical programs to monitor patients' usage of their NIVs. According to Lincare's internal protocols for its Centers, clinical staff were expected to regularly follow up with NIV patients—including through home visits at least every sixty days—to ensure patient progress and compliance with physicians' orders.
- g. In violation of Lincare's internal protocols, Lincare's Center clinical staff frequently failed to visit NIV patients every sixty days to confirm that the patients were using their NIVs as directed by their physicians. Some Centers lacked sufficient staff to adequately monitor patient progress and confirm that patients were using the devices as directed by their physicians. On many occasions, clinical staff did not perform home visits for NIV patients for several months.
- h. In addition to conducting patient visits, Lincare had the ability to remotely monitor certain patients' NIV usage for certain newer NIV models through online cloud-based platforms. However, Lincare did not use these systems to confirm that those patients were using the devices as directed.
- i. Lincare continued to seek monthly payments from Federal health care programs for NIV rentals in many instances when its staff had not verified

that patients were still using their NIVs, or had not maintained documentation showing that the patient continued to use the devices.

- j. In some instances, Lincare continued to seek monthly payments from Federal health care programs when it was aware that patients were not using the devices.
- k. In addition, certain of Lincare's internal audits, including a 2018 internal audit, indicated that certain beneficiaries were not regularly using their NIVs.

Coinsurance Payment Waivers

- l. Lincare offered coinsurance payment waivers to certain patients, including NIV patients with Medicare and TRICARE coverage.
 - m. Lincare's policy required documentation of financial hardship and prohibited waiving coinsurance payment for Medicare and Tricare beneficiaries for reasons that were unrelated to the patient's financial ability to make the payment.
 - n. During the Covered Period, on certain occasions Lincare granted coinsurance payment waivers that were not based on the patient's financial need in order to persuade patients to rent NIVs.
- * * *
- o. As a result of the above-referenced conduct, Lincare received reimbursements from the Federal health care programs for some NIV rental claims that did not comply with all of those programs' billing rules and guidance.

3. Defendant shall pay to the Government within fourteen (14) business days of the Effective Date (defined below in Paragraph 31) the sum of \$24,228,517.96, plus interest which shall be compounded annually at a rate of 3.875% accruing from October 6, 2023, to the date of the payment (the "Settlement Amount") in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York. Of the Settlement Amount, \$12,114,258.98 constitutes restitution to the United States.

4. Defendant agrees to cooperate fully and truthfully with the Government's investigation of entities and individuals not released in this Stipulation. Upon reasonable notice, Defendant shall encourage, and agree not to impair, the cooperation of its directors, officers, and

employees, and shall use its 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. Defendant further agrees to furnish to the Government, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed on its behalf by another.

5. Subject to the exceptions in Paragraph 9 (concerning reserved claims), Paragraph 12 (concerning default), and Paragraph 17 (concerning bankruptcy proceedings) below, and conditioned upon Defendant's full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the Government pursuant to Paragraph 3 above, the Government releases Defendant, including its subsidiaries and corporate predecessors, successors and assigns, from any civil or administrative monetary claim that the Government has for the Covered Conduct under the FCA, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812, and the common law theories of fraud, payment by mistake, and unjust enrichment. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Defendant from liability of any kind.

6. Defendant fully and finally releases the Government, its agencies, officers, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendant has asserted, could have asserted, or may assert in the future against the Government, its agencies, officers, employees, servants, or agents related to the Covered Conduct and the Government's investigation, prosecution and settlement thereof.

7. In consideration of Defendant's obligations in this Stipulation and the Corporate Integrity Agreement ("CIA") entered into between OIG-HHS and Defendant on August 10, 2023, and conditioned upon Defendant's full payment of the Settlement Amount, and except as expressly reserved in this Paragraph and Paragraph 9 (concerning excluded claims), OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid and Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Defendant under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Defendant from Medicare, Medicaid and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9 below.

8. In consideration of Defendant's obligations in this Stipulation, and conditioned upon Defendant's full payment of the Settlement Amount, and except as expressly reserved in this Paragraph and Paragraph 9 (concerning excluded claims), DHA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking Defendant's exclusion from TRICARE under 32 C.F.R. § 199.9 for the Covered Conduct. DHA expressly reserves authority to exclude Defendant from TRICARE under 32 C.F.R. § 199.9(f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes DHA or TRICARE from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9 below.

9. Notwithstanding the releases given in Paragraph 5 above, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released

by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any administrative liability or enforcement right, including mandatory exclusion from Federal health care programs;
- d. any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;
- e. any liability based upon obligations created by this Stipulation; and
- f. any liability of individuals.

10. Subject to the exceptions in Paragraph 9 (concerning reserved claims), Paragraph 12 (concerning default), and Paragraph 17 (concerning bankruptcy proceedings) below, and conditioned on timely payment by Defendant of the full Settlement Amount pursuant to Paragraph 3 above and timely payment by Defendant of the full amounts due under the State Settlements, Relators, for themselves and their heirs, successors, attorneys, agents, and assigns, release Defendant, including its subsidiaries and corporate predecessors, successors, and assigns, as well as all of Defendant's current and former officers, directors, employees, attorneys, and other agents, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Relators have against Defendant related to or arising from the Relator Complaint, including without limitation under federal, state, local, or common law, provided, however, that nothing in this Stipulation shall preclude Relators from seeking to recover their reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d) and analogous provisions of state law.

11. In consideration of the execution of this Stipulation by Relators and the Relators' release as set forth in Paragraph 10 above, Defendant, including its subsidiaries, predecessors, and corporate successors and assigns, as well as all of its current and former officers, directors, employees, attorneys, and other agents, releases Relators and their heirs, successors, attorneys, agents, and assigns (the "Relator Released Parties"), from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Defendant has against Relators related to or arising from the Relator Complaint. For the avoidance of doubt, the release in this paragraph includes any claim, proceeding, or cause of action against the Relator Released Parties that relates in any way to the Relator Released Parties' actions in investigating, filing, and litigating this action.

12. Defendant shall be in default of this Stipulation if Defendant fails to make the required payment set forth in Paragraph 3 above on or before the due date for such payment, or if it fails to comply materially with any other term of this Stipulation that applies to it ("Default"). The Government shall provide written notice to Defendant of any Default in the manner set forth in Paragraph 30 below. Defendant shall then have an opportunity to cure the Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due and paying any additional interest accruing under the Stipulation up to the date of payment. If Defendant fails to cure the Default within seven (7) calendar days of receiving the Notice of Default ("Uncured Default"), interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance). In the event of an Uncured Default, Defendant shall agree to the entry of a consent judgment in favor of the United States against Defendant in the amount of the Settlement Amount as attached hereto as Exhibit A. Defendant also agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Stipulation,

and reinstate the claims asserted against Defendant in the Government Complaint, or bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the releases provided in Paragraphs 5, 7, and 8, with any recovery reduced by the amount of any payments previously made by Defendant to the United States under this Stipulation; (ii) take any action to enforce this Stipulation in a new action or by reinstating the Government Complaint; (iii) offset the remaining unpaid balance from any amounts due and owing to Defendant and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Defendant agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Stipulation pursuant to this paragraph, Defendant waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (i) are filed by the United States against Defendant within 120 days of written notification that this Stipulation has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on January 29, 2018. Defendant agrees not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

13. Defendant, having truthfully admitted to the conduct set forth in paragraph 2 hereof (the "Admitted Conduct"), agrees that it shall not, through its attorneys, agents, officers, or

employees, make any public statement, including but not limited to, any statement in a press release, social media forum, or website, that contradicts or is inconsistent with the Admitted Conduct or suggests that the Admitted Conduct is not wrongful (a “Contradictory Statement”). Any Contradictory Statement by Defendant, its attorneys, agents, officers, or employees, shall constitute a violation of this Stipulation, thereby authorizing the Government to pursue any of the remedies set forth in Paragraph 12 of this Stipulation, or seek other appropriate relief from the Court. Before pursuing any remedy, the Government shall notify Defendant that it has determined that Defendant has made a Contradictory Statement. Upon receiving notice from the Government, Defendant may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If Defendant learns of a potential Contradictory Statement by its attorneys, agents, officers, or employees, Defendant must notify the Government of the statement within 24 hours. The decision as to whether any statement constitutes a Contradictory Statement or will be imputed to Defendant for the purpose of this Stipulation, or whether Defendant adequately repudiated a Contradictory Statement to cure a violation of this Stipulation, shall be within the sole discretion of the Government. Consistent with this provision, Defendant may raise defenses and/or assert affirmative claims or defenses in any proceeding brought by private and/or public parties, so long as doing so would not contradict or be inconsistent with the Admitted Conduct.

14. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation. Relators further agree and affirm that the terms of this Stipulation are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

15. Defendant agrees that it waives and shall not seek payment for any of the health care billings covered by this Stipulation 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. Defendant waives 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 Stipulation bars a remedy sought in such criminal prosecution or administrative action.

17. In exchange for valuable consideration provided in this Stipulation, Defendant acknowledges the following:

- a. Defendant has reviewed its financial situation and warrants 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 payment to the United States of the Settlement Amount.
- b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendant, 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 a contemporaneous exchange.
- c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

- d. The Parties do not intend to hinder, delay, or defraud any entity to which Defendant was or became indebted on or after the date of any transfer contemplated in this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).
- e. If Defendant's obligations under this Stipulation are avoided for any reason (including but not limited to through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Defendant or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Defendant's debts, or to adjudicate Defendant as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant or for all or any substantial part of Defendant's assets:
 - (1) the United States may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the releases provided in Paragraphs 5, 7, and 8;
 - (2) the United States has an undisputed, noncontingent, and liquidated allowed claim against Defendant in the amount of \$24,228,517.96, less any payments received pursuant to the Stipulation, provided, however, that such payments are not otherwise avoided and recovered from the United States by Defendant, a receiver, trustee, custodian, or other similar official for Defendant; and
 - (3) if any payments are avoided and recovered by Defendant, a receiver, trustee, custodian, or similar official for Defendant, Relators shall, within thirty

days of written notice from the United States to the undersigned Relators' counsel, return any portions of such payments already paid by the United States to Relators.

- f. Defendant agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 17(e) above is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Defendant shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Defendant waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Defendant that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on January 29, 2018.

18. 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), any TRICARE or FEHBP carrier, or any state payer related to the Covered Conduct; and Defendant agrees not to resubmit to any Medicare contractor, any TRICARE or FEHBP carrier, 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.

19. Defendant 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-6; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendant, including its present or former officers, directors, employees, and agents in connection with:
- (1) the matters covered by this Stipulation;
 - (2) the Government's audit(s) and civil investigation(s) of matters covered by this Stipulation;
 - (3) Defendant's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil investigation(s) in connection with matters covered by this Stipulation (including attorneys' fees);
 - (4) the negotiation and performance of this Stipulation;
 - (5) any payment Defendant makes to the Government pursuant to this Stipulation and any payment Defendant may make to Relators, including expenses, costs and attorneys' fees; and
 - (6) the negotiation of, and obligations undertaken pursuant to the CIA to: (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and (ii) prepare and submit reports to the OIG-HHS,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and FEHBP (hereinafter referred to as “Unallowable Costs”). However, nothing in Paragraph 19(a)(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowed based on any other authority applicable to Defendant.

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Defendant, and Defendant 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 Defendant or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within ninety (90) days of the Effective Date of this Stipulation, Defendant shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and to Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought by Defendant 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 Defendant 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. Defendant agrees that the Government, at a minimum, shall be entitled to recoup from Defendant 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 Government pursuant to the direction of the Department of Justice and/or the affected agencies. The Government, including the Department of Justice and/or the affected agencies, reserves its right to audit, examine, or re-examine Defendant's books and records and to disagree with any calculation submitted by Defendant or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendant, or the effect of any such Unallowable Costs on the amounts of such payments.

- d. Nothing in this Stipulation shall constitute a waiver of the rights of the Government to audit, examine, or re-examine Defendant's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

20. This Stipulation 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 as otherwise provided herein.

21. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation; provided, however, nothing in this Stipulation shall preclude Relators from seeking to recover their expenses or attorneys' fees and costs from Defendant, pursuant to 31 U.S.C. § 3730(d).

22. Any failure by the Government to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

23. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York.

24. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

25. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties. No prior agreements, oral representations or statements shall be considered part of this Stipulation.

26. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

27. This Stipulation is binding on Defendant's successors, transferees, heirs, and assigns.

28. This Stipulation is binding on Relators' successors, transferees, heirs, and assigns.

29. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

30. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:

Charles Jacob, Amanda Lee, and Ilan Stein
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, New York 10007
charles.jacob@usdoj.gov
amanda.lee2@usdoj.gov
ilan.stein@usdoj.gov

TO DEFENDANT:

Lawrence M. Kraus
Foley & Lardner LLP
111 Huntington Avenue, Suite 2500
Boston, MA 02199
lkraus@foley.com

TO RELATORS:

Steven Shepard
Susman Godfrey LLP
1301 Avenue of the Americas, 32nd Fl.
New York, NY 10019
sshepard@susmangodfrey.com

31. The effective date of this Stipulation is the date upon which it is approved by the Court (the "Effective Date").

Agreed to by:

THE UNITED STATES

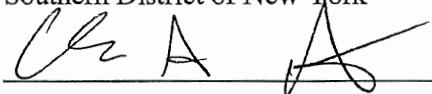
Dated: New York, New York

February 5, 2024

DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

By:



CHARLES S. JACOB

AMANDA LEE

ILAN STEIN

Assistant United States Attorneys

86 Chambers Street, Third Floor

New York, New York 10007

Tel.: (212) 637-2725/2781/2525

Attorneys for the Government

Dated: _____, 2024

Office of the Inspector General, the U.S.
Department of Health and Human Services

By:

SUSAN GILLIN Digitally signed by SUSAN GILLIN
Date: 2024.02.05 12:57:40 -05'00'

SUSAN E. GILLIN

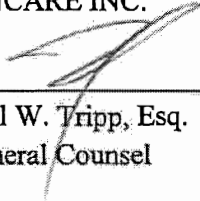
Assistant Inspector General for Legal Affairs

THE DEFENDANT

Dated: February 7, 2024


LINCARE INC.

By: _____


Paul W. Tripp, Esq.
General Counsel

FOLEY & LARDNER LLP

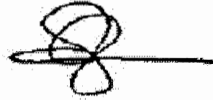
By: _____


Lawrence M. Kraus
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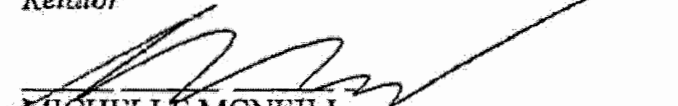
THE RELATORS

Dated: 02-02, 2024



SANDRA GAUCH
Relator

Dated: 02-02, 2024



MICHELLE MCNEILL
Relator

Dated: New York, New York
_____, 2024

SUSMAN GODFREY LLP

By:

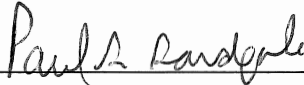


Feb. 5, 2024

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SO ORDERED:



HON. PAUL G. GARDEPHE
UNITED STATES DISTRICT JUDGE

Dated: February 14, 2024