

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA *ex rel.* Ann Schweiger, :
STATE OF NEW YORK *ex rel.* Ann Schweiger, and :
ANN SCHWEIGER, Individually, :

Plaintiffs, :

17 Civ. 0900 (PAE)

v. :

VISITING NURSE SERVICE OF NEW YORK, :
VISITING NURSE SERVICE OF NEW YORK :
COMMUNITY HEALTH SERVICES, and :
VISITING NURSE SERVICE OF NEW YORK :
HOME CARE, :

Defendants. :

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UNITED STATES OF AMERICA, :

Plaintiff-Intervenor, :

v. :

VISITING NURSE SERVICE OF NEW YORK :
d/b/a VNS HEALTH, VISITING NURSE SERVICE :
OF NEW YORK HOME CARE II d/b/a VISITING :
NURSE SERVICE OF NEW YORK HOME CARE, :
and VNS HEALTH BEHAVIORAL HEALTH, INC. :

Defendants. :
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**STIPULATION AND ORDER
OF SETTLEMENT AND DISMISSAL**

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiff the United States of America (the “United States” or “Government”), by its attorney, Damian Williams, United States Attorney for the Southern District

of New York; the relator Ann Schweiger (“Relator”), by her authorized representatives; and defendants Visiting Nurse Service of New York d/b/a VNS Health (“VNS Health”), Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care, and VNS Health Behavioral Health, Inc. (together, “VNS”) (“VNS,” and together with the Government and Relator, the “Parties”), by their authorized representatives;

WHEREAS, defendant VNS Health provides corporate administrative and support services to its affiliate corporations, including Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care, which provides home and community-based skilled nursing, rehabilitation therapy, social work, and other professional services;

WHEREAS, defendant VNS Health Behavioral Health, Inc. provides outpatient mental health services to children, adolescents, and adults, including underserved individuals with acute and chronic mental illness;

WHEREAS, VNS is licensed by the New York State Office of Mental Health (“OMH”) to serve as an Assertive Community Treatment (“ACT”) Program provider;

WHEREAS, ACT is a Medicaid-funded program supervised and regulated by OMH that is designed to deliver a full range of clinical treatment and care and rehabilitation, case management, and support services to individuals who have been diagnosed with a serious mental illness and whose needs have not been well met by more traditional service delivery approaches;

WHEREAS, ACT Program providers are reimbursed on a capitated basis, meaning that for each provider’s patient that is enrolled in the ACT Program, a provider will receive a monthly payment that may be adjusted based on whether the individual received full, partial, or inpatient services that month;

WHEREAS, as an ACT Program provider, VNS was required to comply with state regulations promulgated by OMH and was subject to the ACT Program Guidelines, as amended (the “ACT Guidelines”) issued by the OMH;

WHEREAS, VNS operated an ACT Program in Far Rockaway, Queens (the “VNS Far Rockaway ACT Program”);

WHEREAS, on or about February 7, 2017, Relator filed a complaint under the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, alleging, *inter alia*, that VNS violated the FCA by submitting false claims relating to services provided to patients who participated in the VNS Far Rockaway ACT Program (the “Relator Complaint”);

WHEREAS, the Government alleges that from January 1, 2014 through December 31, 2018 (the “Covered Period”), VNS submitted or caused to be submitted false claims to Medicaid for monthly payments for 103 individuals enrolled in the VNS Far Rockaway ACT Program who did not receive the full array of services that VNS was required to provide under the ACT Program or for whom VNS did not adequately or timely document provision of such services in accordance with applicable regulations or the ACT Guidelines. 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 Complaint-In-Intervention in the above-referenced *qui tam* action (“Government Complaint”), in which it is asserting claims against VNS under the FCA and common law for the Covered Conduct;

WHEREAS, VNS intends to enter into a separate settlement agreement with the State of New York (the “State”) and Relator to resolve claims asserted by the State under New York law

for the Covered Conduct, and has agreed to pay a total of \$572,649.89 to the State pursuant to that settlement agreement;

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against VNS 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. VNS admits, acknowledges and accepts responsibility for the following conduct during the Covered Period (the "Admitted Conduct"):

- a. **Intake Forms and Initial Assessments:** Intake forms and initial assessments record necessary background information about the patient, inform subsequent treatment, and set a baseline for improvement while the patient was in the program. In multiple instances and contrary to the ACT Guidelines, VNS failed to complete intake forms and/or initial assessments for patients enrolled in the VNS Far Rockaway ACT Program, failed to complete intake forms and/or initial assessments in a timely manner, or failed to provide the necessary supervisory review and approval of intake forms and/or initial assessments.
- b. **Immediate Needs Assessments:** Immediate needs assessments are used to determine patient needs as to safety/dangerousness, food, clothing,

shelter, and medical needs. In multiple instances and contrary to the ACT Guidelines, VNS failed to complete immediate needs assessments for patients enrolled in the VNS Far Rockaway ACT Program, failed to complete immediate needs assessments in a timely manner, or failed to provide the necessary supervisory review and approval of immediate needs assessments.

- c. **Comprehensive Assessments:** Comprehensive assessments provide a necessary baseline to provide services and are updated to reflect the patient's changing needs over time. In multiple instances and contrary to the ACT Guidelines, VNS failed to complete comprehensive assessments for patients enrolled in the VNS Far Rockaway ACT Program, failed to complete comprehensive assessments in a timely manner, or failed to provide the necessary supervisory review and approval of comprehensive assessments.
- d. **Service Plan:** Service plans set forth specific objectives and planned services necessary to facilitate achievement of the patient's recovery goals. In multiple instances and contrary to the ACT Guidelines, VNS failed to complete service plans for patients enrolled in the VNS Far Rockaway ACT Program, failed to complete service plans in a timely manner, or failed to provide the necessary supervisory review and approval of service plans.

- e. **Psychiatric Visits:** In multiple instances and contrary to the ACT Guidelines, VNS failed to document psychiatric visits for patients enrolled in the VNS Far Rockaway ACT Program.
- f. **Progress Notes:** Progress notes document service contacts and attempted contacts, progress or lack of progress toward goals, and significant events. In multiple instances and contrary to the ACT Guidelines, VNS failed to record progress notes for patients enrolled in the VNS Far Rockaway ACT Program until several days or even weeks after the contact with the patient. In addition, VNS sought and received payment at the full monthly level even though, based on the progress notes, they were entitled only to partial payment based on the number of documented contacts with the patient.
- g. VNS sought and obtained monthly payments for patients enrolled in the VNS Far Rockaway ACT Program notwithstanding the conduct identified in paragraphs (a)–(f) of this section.

3. VNS shall pay to the Government within fourteen (14) business days of the Effective Date (defined below in Paragraph 29) the sum of \$381,766.59 plus any applicable interest which shall be compounded annually at the rate of 4.5% accruing from the Effective Date 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, \$190,883.30 constitutes restitution to the United States.

4. VNS agrees to cooperate fully and truthfully with the United States’ investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, VNS 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. VNS further agrees to furnish to the United States, 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 by another on their behalf, if any.

5. Subject to the exceptions in Paragraph 9 (concerning reserved claims), Paragraph 10 (concerning default), and Paragraph 15 (concerning bankruptcy proceedings) below, and conditioned on VNS's full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the United States pursuant to Paragraph 3 above, the United States releases VNS, including their corporate members, subsidiaries, divisions and corporate predecessors, successors, assigns and corporate affiliates, from any civil or administrative monetary claim that the United States 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 VNS from liability of any kind.

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

7. Subject to the exceptions in Paragraph 9 (concerning reserved claims), Paragraph 10 (concerning default) and Paragraph 15 (concerning bankruptcy proceedings) below, and conditioned on VNS's full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the United States pursuant to Paragraph 3 above, Relator, for herself and her heirs, successors, attorneys, agents, and assigns, as well as any other person or entity acting on her behalf or asserting her rights, fully and finally release, waive, and forever discharge VNS, including their subsidiaries and divisions, corporate predecessors, successors, assigns, and corporate affiliates, as well as all of their current and former officers, directors, employees, attorneys, and other agents, from any claims or allegations that Relator has or may have on behalf of the Government under the FCA for the Covered Conduct, and from any liability and all manner of claims, demands, proceedings, liens, and causes of action of any kind or description, whether known or unknown, fixed or contingent, in law or in equity, in contract or tort, under any federal or state statute or regulation, or under common law, or that Relator otherwise would have standing to bring, that Relator has or may have against VNS, including without limitation, any liability arising from or relating to claims that Relator asserted or could have asserted against VNS based on the Covered Conduct or the allegations in the Relator Complaint; provided, however, that nothing in this Stipulation shall release claims or allegations that Relator brought in the Relator Complaint on behalf of the State of New York; release Relator's individual retaliation claims alleged against VNS in the Relator Complaint pursuant to 31 U.S.C. § 3730(h) and N.Y. STATE FIN. LAW, § 191; or release or preclude Relator from seeking to recover her reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d).

8. In consideration of the execution of this Stipulation by Relator and the Relator's release as set forth in Paragraph 7 above, VNS, including its corporate members, subsidiaries and

divisions, corporate predecessors, successors, assigns, and corporate affiliates, as well as all of their current and former officers, directors, employees, attorneys, and other agents, release Relator and her heirs, successors, attorneys, agents, and assigns, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that VNS have against Relator related to or arising from the Relator Complaint.

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 but not limited to the mandatory or permissive exclusion from Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) or 42 U.S.C. § 1320a-7(b) (permissive exclusion);
- 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 Stipulation; and
- f. any liability of individuals.

10. VNS shall be in default of this Stipulation if VNS 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 will provide a written notice to VNS of any Default in the manner set forth in Paragraph 28 below ("Notice of Default"). VNS 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 VNS 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, VNS shall agree to the entry of a consent judgment in favor of the United States against VNS in the amount of the Settlement Amount as attached hereto as Exhibit A. VNS 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 VNS in the Government Complaint, or bring any civil and/or administrative claim, action, or proceeding against VNS for the claims that would otherwise be covered by the releases provided in Paragraph 5 above, with any recovery reduced by the amount of any payments previously made by VNS 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 VNS 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, VNS 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, VNS 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 VNS 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 February 7, 2017. VNS 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.

11. VNS, having truthfully admitted to the Admitted Conduct set forth in Paragraph 2 hereof, agrees 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 VNS, 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 10 hereof, or seek other appropriate relief from the Court. Before pursuing any remedy, the Government shall notify VNS that it has determined that VNS have made a Contradictory Statement. Upon receiving notice from the Government, VNS may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If VNS learns of a potential Contradictory Statement by their attorneys, agents, officers, or employees, VNS 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 VNS for the purpose of this Stipulation, or whether VNS 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, VNS 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.

12. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation; Relator agrees and confirms 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).

13. VNS 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.

14. VNS waives and shall not assert any defenses VNS 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.

15. In exchange for valuable consideration provided in this Stipulation, VNS acknowledges the following:

- a. VNS 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 VNS, 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 VNS were 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 VNS'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, VNS or a third party commence a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of any of VNS's debts, or to adjudicate VNS as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for VNS or for all or any substantial part of any VNS's assets:
 - i. the United States may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding

against VNS for the claims that would otherwise be covered by the releases provided in Paragraph 5 above;

- ii. the United States has an undisputed, noncontingent, and liquidated allowed claim against VNS in the amount of \$381,766.59, less any payments received pursuant to the Stipulation, provided, however, that such payments are not otherwise avoided and recovered from the United States by VNS, a receiver, trustee, custodian, or other similar official for VNS; and
 - iii. if any payments are avoided and recovered by VNS, a receiver, trustee, custodian, or similar official for VNS, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return any portions of such payments already paid by the United States to Relator.
- f. VNS agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 15(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. VNS 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). VNS 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 VNS that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on February 7, 2017.

16. 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, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

17. VNS 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. §§ 1395-1395III and 1396-1396w-6; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of VNS, including their present or former officers, directors, employees, and agents in connection with:

- (1) the matters covered by this Stipulation;
- (2) the United States' audit(s) and civil investigation(s) of matters covered by this Stipulation;
- (3) VNS's investigation, defense, and corrective actions undertaken in response to the United States' 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; and

(5) any payment VNS makes to the United States pursuant to this Stipulation and any payment VNS may make to Relator, including expenses, 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 by VNS, and VNS 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 VNS or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, VNS 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 VNS or any of their 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. VNS agrees that the United States, at a minimum, shall be entitled to recoup from VNS 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, including the Department of Justice and/or the affected agencies, reserves its rights to disagree with any calculations submitted by VNS or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on VNS or any of its subsidiaries' or affiliates' cost reports, cost statements, or information reports.

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

18. 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.

19. 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 Relator from seeking to recover her expenses or attorneys' fees and costs from Defendants, pursuant to 31 U.S.C. § 3730(d).

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. This Stipulation is binding on VNS's successors, transferees, heirs, and assigns.

26. This Stipulation is binding on Relator's successors, transferees, heirs, and assigns.

27. 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.

28. 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:

David J. Kennedy
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
New York, New York 10007
(212) 637-2733
david.kennedy2@usdoj.gov

TO DEFENDANTS:

Brett R. Friedman
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036-8704
(212) 596-9044
brett.friedman@ropesgray.com

TO RELATOR:

Michelle L. Kornblit
NICHOLS KASTER, PLLP
IDS Center, 80 South 8th Street Suite 4700
Minneapolis, MN 55402
(612) 256-3209
mkornblit@nka.com

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

30. Upon receipt of the payment described in Paragraph 3 above and the payment VNS are required to make pursuant to the State Settlement, the Parties shall promptly sign and file a joint stipulation to dismiss the Government Complaint and the Relator Complaint. As to the

Government, the dismissal shall be with prejudice only as to claims related to the Covered Conduct that are being released pursuant to this Stipulation, and shall be without prejudice as to all other claims and conduct. As to the Relator, the dismissal shall be with prejudice as to all claims in the Relator Complaint, except for Relator's individual retaliation claims alleged against VNS in the Relator Complaint pursuant to 31 U.S.C. § 3730(h) and N.Y. State Fin. Law § 191 and Relator's claims for reasonable expenses, costs, and attorneys' fees pursuant to 31 U.S.C. § 3730(d). However, the Court shall retain jurisdiction to enforce the terms and conditions of this Stipulation.


Agreed to by:

THE UNITED STATES OF AMERICA

Dated: May 22, 2024
New York, New York

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

BY:



DAVID J. KENNEDY
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2733
E-mail: david.kennedy2@usdoj.gov

Attorney for the United States of America

RELATOR

Dated: Far Rockaway, New York
June 17th, 2024

Ann Schweiger

Ann Schweiger
Relator

Dated: Bala Cynwyd, Pennsylvania
June 17, 2024

Michelle L Kornblit

By: _____

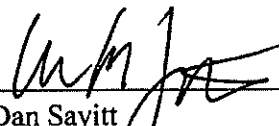
Michelle L. Kornblit
NICHOLS KASTER, PLLP
IDS Center, 80 South 8th Street Suite 4700
Minneapolis, MN 55402
(612) 256-3209
mkornblit@nka.com


Attorneys for Relator

DEFENDANTS

Dated: New York New York
June 17, 2024

Visiting Nurse Service of New York

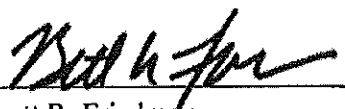
By: 
Dan Savitt
President and Chief Executive Officer

By: 
Brett R. Friedman
ROPES & GRAY LLP
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Attorneys for Defendants

Dated: New York New York
June 17, 2024


Visiting Nurse Service of New York Home
Care II d/b/a Visiting Nurse Service of New
York Home Care

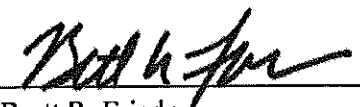
By: 
Dan Savitt
President and Chief Executive Officer

By: 
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Attorneys for Defendants

Dated: New York New York
June 17, 2024

VNS Health Behavioral Health, Inc.

By: 
Dan Savitt
President and Chief Executive Officer

By: 
Brett R. Friedman
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036-8704
(212) 596-9044
brett.friedman@ropesgray.com
Attorneys for Defendants

SO ORDERED:

Paul A. Engely
HON. PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE

Dated: June 25, 2024

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
UNITED STATES OF AMERICA <i>ex rel.</i> Ann Schweiger,	:
STATE OF NEW YORK <i>ex rel.</i> Ann Schweiger, and	:
ANN SCHWEIGER, Individually,	:
	:
Plaintiffs,	:
	:
	:
v.	:
	:
VISITING NURSE SERVICE OF NEW YORK,	:
VISITING NURSE SERVICE OF NEW YORK	:
COMMUNITY HEALTH SERVICES, and	:
VISITING NURSE SERVICE OF NEW YORK	:
HOME CARE,	:
Defendants.	:
-----X	
UNITED STATES OF AMERICA,	:
	:
Plaintiff-Intervenor,	:
	:
	:
v.	:
	:
VISITING NURSE SERVICE OF NEW YORK	:
d/b/a VNS HEALTH, VISITING NURSE SERVICE	:
OF NEW YORK HOME CARE II d/b/a VISITING	:
NURSE SERVICE OF NEW YORK HOME CARE,	:
and VNS HEALTH BEHAVIORAL HEALTH, INC.	:
:-----	
x	

CONSENT JUDGMENT

Upon the consent of Plaintiff the United States of America and defendants Visiting Nurse Service of New York d/b/a VNS Health and Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care (together, "VNS"), it is hereby

ORDERED, ADJUDGED and DECREED: that plaintiff the United States of America is

awarded judgment in the amount of \$ 381,766.59 as against defendants Visiting Nurse Service of New York d/b/a VNS Health, Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care, and VNS Health Behavioral Health, Inc., as well as post-judgment interest at the rate of 12% per annum compounded daily, for which each of defendants Visiting Nurse Service of New York d/b/a VNS Health, Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care, and VNS Health Behavioral Health, Inc. is jointly and severally liable.

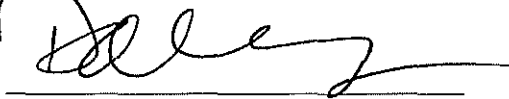
Agreed to by:

THE UNITED STATES OF AMERICA

Dated: May 22, 2024
New York, New York

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

BY:



DAVID J. KENNEDY
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2733
david.kennedy2@usdoj.gov

Attorney for the United States of America

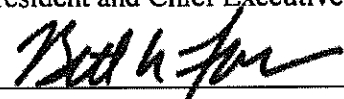
DEFENDANTS

Dated: New York New York
June 17, 2024

Visiting Nurse Service of New York

By: 

Dan Savitt
President and Chief Executive Officer

By: 


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Attorneys for Defendants

Dated: New York New York
June 17, 2024

Visiting Nurse Service of New York Home
Care II d/b/a Visiting Nurse Service of New
York Home Care

By: 


Dan Savitt
President and Chief Executive Officer

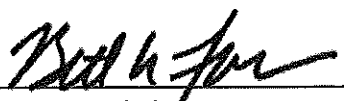
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June 17, 2024

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