

*Life Spine*

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

UNITED STATES OF AMERICA and the STATES of COLORADO, CONNECTICUT, THE DISTRICT OF COLUMBIA, FLORIDA, ILLINOIS, INDIANA, MARYLAND, MASSACHUSETTS, NEW JERSEY, NEW YORK, OHIO, OKLAHOMA, TEXAS, AND VIRGINIA *ex rel.* BNHT LLC,

Plaintiffs,

v.

LIFE SPINE INC., MICHAEL BUTLER, and JOSEPH LOY,

Defendants.

18 Civ. 1311 (JSR)

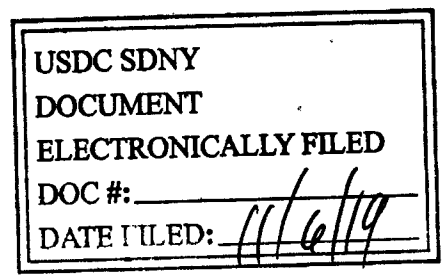
UNITED STATES OF AMERICA,

Plaintiff-Intervenor

v.

LIFE SPINE, INC., MICHAEL BUTLER, and RICHARD GREIBER,

Defendants.



**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, Geoffrey S. Berman, United States Attorney for the Southern

District of New York; relator BNHT LLC, which is composed of Walter J. Bennett, Jon Nolan, Larry Harvey, and Cameron Thrall (collectively, the “Relators”); and Defendant Life Spine, Inc. (“Life Spine”) (together with the Government and the Relators, the “Parties”), through their authorized representatives;

WHEREAS, Life Spine is an Illinois-based company that develops, markets, and sells medical devices and equipment primarily used in spinal surgeries performed by orthopedic surgeons and neurosurgeons;

WHEREAS, on or about February 14, 2018, BNHT LLC filed a complaint under the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.* (the “Relator Complaint”), alleging, *inter alia*, that Life Spine engaged in an illegal kickback scheme by paying physicians ostensibly for consulting services when in reality the payments were intended to induce sales of Life Spine products;

WHEREAS, the Government alleges that from January 2012 through December 2018 (the “Covered Period”), Life Spine, with the knowledge, involvement, and participation of co-defendant Michael Butler, Life Spine’s President and Chief Executive Officer, and co-defendant Richard Greiber, a senior manager at Life Spine, offered and paid remuneration, in the form of millions of dollars in consulting fees, royalties, and intellectual property acquisition fees, to surgeons to induce them to use Life Spine’s spinal implants, devices, and equipment, in violation of the Anti-Kickback Statute (the “AKS”), 42 U.S.C. §§ 13320a-7b(b), and thereby caused false claims for payment to be submitted to and paid by Medicare and Medicaid. The conduct described in this paragraph is referred to as the “Covered Conduct” for purposes of this Stipulation;

WHEREAS, the Government filed a Notice of Election to Intervene dated April 22, 2019;

WHEREAS, on or about July 22, 2019, the Government filed its Complaint-In-Intervention in the above-referenced *qui tam* action (“the Government Complaint”), in which it is asserting claims against Life Spine under the FCA for the Covered Conduct;

WHEREAS, in connection with settlement discussions and in order to allow the Government to assess Life Spine’s ability to make payments to resolve this matter, Life Spine has submitted information concerning its financial condition to the Government, including but not limited to information relating to its assets, liabilities, expenses, revenues, profits, and financial projections (the “Life Spine Financial Information”);

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against Life Spine in the Government Complaint and the Relator Complaint (with the exception of the Relators’ claim for reasonable expenses and attorneys’ fees and costs pursuant to 31 U.S.C. § 3730(d) and the Relators’ claim for unlawful retaliation pursuant to 31 U.S.C. § 3730(h));

WHEREAS, the Relators’ claim to a share of the proceeds from the settlement between the Parties will be the subject of a separate agreement between the Relators and the United States;

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. Life Spine admits, acknowledges, and accepts responsibility for the following conduct:

- a. Life Spine is a privately-held company based in Huntley, Illinois. The company develops, markets, and sells a wide range of medical devices and equipment primarily used in spinal surgeries performed by orthopedic surgeons and neurosurgeons throughout the world.
- b. During the Covered Period, Life Spine entered into agreements with dozens of surgeons pursuant to which the surgeons received compensation from Life Spine. The agreements fell into three categories of arrangements, although a particular agreement could cover more than one type of arrangement, and individual surgeons frequently entered into more than one type of agreement.
  - i. *Medical Education Agreements ("Med Ed Agreements")*: Life Spine retained surgeons as consultants to provide training and education services for an hourly rate of \$500. The scope of these services was fairly broad and could include, among other things, speaking about Life Spine products, demonstrating procedures at cadaver labs, preparing research papers related to Life Spine products, presenting at trade shows or conferences, participating in clinical studies of Life Spine products, and training Life Spine's staff.
  - ii. *Product Development Agreements ("PD Agreements")*: Life Spine retained surgeons as consultants to advise on specific new products in the development stage. In addition to paying surgeons an hourly rate of \$500 for time spent providing input on Life Spine products, Life Spine typically paid surgeons royalties on future sales of the products once they went to market in exchange for any intellectual property rights of the developing surgeon in the product (excluding any sales attributable to the surgeons' own usage of the products or the usage of other physicians in the surgeons' practices). Life Spine retained up to eight surgeons per new product development project, and frequently retained the same surgeon to consult on several different projects at the same time.
  - iii. *Intellectual Property Purchase Agreements ("IP Purchase Agreements")*: Life Spine entered into agreements to purchase (or sometimes license) surgeons' patents or patent applications. Life Spine frequently paid surgeons initial, up-front acquisition fees, which in some cases were hundreds of thousands of dollars. In addition, surgeons received royalties on sales of any products developed based on the patents, which in some instances were 5-

7% of net sales (excluding any sales attributable to the surgeons' own usage of the products or the usage of other physicians in the surgeons' practices). Pursuant to IP Purchase Agreements, Life Spine also committed to using its resources to assist with the development, marketing, sale, and distribution of products that were based on the surgeon's patent.

- c. During the Covered Period, Life Spine paid surgeons, and entities owned in whole or in part by the surgeons, more than \$7 million in consulting fees, royalties, and intellectual property acquisition payments. Most of the surgeons who received these payments substantially increased their usage of Life Spine products after entering into agreements with Life Spine. For a portion of the Covered Period, Life Spine also compensated some surgeons in the form of warrants for the purchase of shares in the company.
- d. Many of the surgeons who received consulting fees, royalties, and intellectual property acquisition payments were high-volume users of Life Spine products. Approximately 21 of the top 30 users of Life Spine products during the Covered Period received consulting fees, royalties, and/or intellectual property acquisition payments. In addition, approximately half of Life Spine's domestic sales of spinal products during the Covered Period were attributable to surgeries performed by surgeons who received consulting fees, royalties, and intellectual property acquisition payments from Life Spine.
- e. For example, Life Spine entered into two separate IP Purchase Agreements with an Indiana-based surgeon who was the top user of Life Spine products during the Covered Period. One agreement started in January 2016, and the other started in January 2018. Each IP Purchase Agreement included a \$2 million acquisition fee (to be paid in installments), as well as a 5% royalty on future product sales. In addition, Life Spine paid the same surgeon over \$295,000 in consulting and royalty fees during the Covered Period. This surgeon accounted for approximately 15% of Life Spine's total domestic sales of spinal products during the Covered Period, including over 24% of total domestic spinal sales in 2016 and 2017.
- f. Life Spine closely tracked the usage of Life Spine products by surgeons who received consulting fees, royalties, and intellectual property acquisition payments. During the Covered Period, Life Spine generated reports for management that reflected both the payments made to surgeons and the surgeons' usage of Life Spine products during a given time period. On one occasion a report included an "ROI" column that calculated Life Spine's return on investment by dividing the sales revenue associated with each surgeon's usage of Life Spine products by the total amount paid to

that surgeon in consulting fees and royalties during the same period. When surgeons' usage decreased, senior sales managers would contact the surgeons, or their distributors, to urge the surgeons to more frequently use Life Spine products.

- g. From 2012 through mid-2018, Life Spine did not have effective systems in place to ensure that the company's relationships with surgeons complied with applicable laws and regulations, including the AKS. Life Spine had an ineffective process to vet surgeon consultant candidates and to review IP Purchase Agreements to ensure that they did not present any AKS concerns.

3. Life Spine shall pay to the United States the sum of \$5,500,000 (the "Settlement Amount") to be paid in nine installments according to the schedule set forth below. Life Spine shall make the below-referenced payments 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. The \$5,500,000 constitutes restitution to the United States.

- a. Within fourteen (14) business days of the Effective Date (defined below in Paragraph 31), Life Spine shall pay the United States the sum of \$100,000.
- b. On or before December 31, 2019, Life Spine shall pay the United States the sum of \$1,500,000.
- c. On or before January 31, 2020, Life Spine shall pay the United States the sum of \$750,000.
- d. On or before February 28, 2020, Life Spine shall pay the United States the sum of \$650,000.
- e. On or before December 31, 2020, Life Spine shall pay the United States the sum of \$500,000.
- f. On or before December 31, 2021, Life Spine shall pay the United States the sum of \$500,000.

- g. On or before December 31, 2022, Life Spine shall pay the United States the sum of \$500,000.
- h. On or before December 31, 2023, Life Spine shall pay the United States the sum of \$500,000.
- i. On or before December 31, 2024, Life Spine shall pay the United States the sum of \$500,000.

4. Life Spine shall execute and agree to the entry of a consent judgment in favor of the Government and against Life Spine in the amount of \$5,500,000, a copy of which is attached hereto as Exhibit A (the "Life Spine Consent Judgment"). The Government may use the Life Spine Consent Judgment to obtain a security interest in any asset or property of Life Spine, but shall not engage in other collection activity with respect to the Life Spine Consent Judgment so long as Life Spine fully complies with the terms of this Stipulation. Should Life Spine comply fully with the payment schedule set forth above as well as the other terms of this Stipulation, the Life Spine Consent Judgment shall be deemed to be satisfied in full. Within thirty (30) calendar days after Life Spine makes the final payment under the payment schedule, the Government shall file with the Clerk of the Court and deliver to Life Spine a Full Satisfaction of Judgment. In the event that Life Spine fully pays the Settlement Amount faster than as provided in the payment schedule set forth above, and fully complies with all other terms of the Stipulation, the Life Spine Consent Judgment shall be deemed to be satisfied in full and the Government shall file with the Clerk of the Court and deliver to Life Spine a Full Satisfaction of Judgment. Should Life Spine fail to comply fully with the payment schedule set forth above or any other term of this Stipulation, Life Spine shall be in default of this Stipulation, in which case the Government may take any of the actions set forth in Paragraph 13 below.

5. In the event Life Spine receives any payments pursuant to an insurance policy to cover any portion of Life Spine's liability relating to this Stipulation or the Covered Conduct, Life Spine shall pay to the United States the total sum of such payments within five (5) business days of receipt, and such payments shall be in addition to and not count towards the Settlement Amount.

6. Life Spine agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, Life Spine shall encourage, and agrees not to impair, the cooperation of Life Spine's 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. Life Spine 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 their possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

7. Subject to the exceptions in Paragraphs 11 and 18 below (concerning excluded claims and bankruptcy proceedings), and conditioned upon Life Spine'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 Life Spine, including Life Spine's subsidiaries and corporate predecessors, successors and assigns, 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 Life Spine from liability of any kind.

8. Life Spine 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 Life Spine has 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 and the United States' investigation, prosecution and settlement thereof.

9. Conditioned on Life Spine's timely payment of the full Settlement Amount pursuant to Paragraph 3 above, the Relators, for themselves and their heirs, successors, attorneys, agents, and assigns, release Life Spine, including its subsidiaries and corporate predecessors, successors and assigns, as well as all of their current and former officers, directors, employees, attorneys, and other agents, except for Butler, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that the Relators have against Life Spine related to or arising from the Relator Complaint; provided, however, that nothing in this Stipulation shall preclude the Relators from seeking to recover their reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d) or seeking relief for the claims asserted in the Relator Complaint alleging unlawful retaliation pursuant to 31 U.S.C. § 3730(h).

10. In consideration of the execution of this Stipulation by the Relators and the Relators' release as set forth in Paragraph 9 above, Life Spine, including Life Spine's subsidiaries, predecessors, and corporate successors and assigns, as well as all of their current and former officers, directors, employees, attorneys, and other agents, except for Butler, release the Relators and their successors, heirs, assigns, attorneys, and other agents, from any and all

manner of claims, proceedings, liens, and causes of action of any kind or description that Life Spine have against the Relators related to or arising from the Relator Complaint; provided, however, that nothing in this Stipulation shall preclude Life Spine from pursuing an Offer of Judgment pursuant to Fed. R. Civ. P. 68 or asserting any applicable counterclaims against the Relators with respect to Relators' (1) claim for their reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d); or (2) claims asserted in the Relator Complaint alleging unlawful retaliation pursuant to 31 U.S.C. § 3730(h).

11. Notwithstanding the release given in Paragraph 7, 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, including but not limited to the mandatory or permissive exclusion from Federal healthcare 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.

12. Life Spine has provided the Life Spine Financial Information to the United States and the United States has relied on the accuracy and completeness of that information in reaching this Stipulation. Life Spine warrants that the Life Spine Financial Information is complete, truthful, and accurate. If the United States learns of any misrepresentation or inaccuracy in the Life Spine Financial Information, or of assets in which Life Spine had an interest at the time of this Stipulation that were not disclosed in the Life Spine Financial Information, and if such nondisclosure or misrepresentation changes either the estimated net worth, annual net income, or assets set forth in the Life Spine Financial Information by 10% or more, the United States may at its option: (i) rescind this Stipulation and reinstate the claims asserted against Life Spine in the Government Complaint, or (ii) let the Stipulation stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth, net income or assets that were previously not disclosed. Life Spine agrees not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorneys' fees and expenses.

13. Life Spine shall be in default of this Stipulation if it fails to make the required payments set forth in Paragraph 3 above on or before the due date for such payments, or if it fails to comply materially with any other term of this Stipulation ("Default"). The Government shall provide written notice to Life Spine of any Default in the manner set forth in Paragraph 30 below. Life Spine shall then have an opportunity to cure the Default within ten (10) calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within ten (10) calendar days of the delivery of the notice of Default ("Uncured Default"), interest shall accrue at the rate of 12% per annum compounded daily on the remaining unpaid

principal balance of the settlement amount set forth in Paragraph 3 above, beginning ten (10) calendar days after mailing of the notice of Default. The United States may also, at its option, (a) rescind this Stipulation and reinstate the claims asserted against Life Spine in the Government Complaint; (b) seek specific performance of this Stipulation; (c) offset the remaining unpaid balance of the settlement amount set forth in Paragraph 3 above from any amounts due and owing Life Spine by any department, agency, or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. Life Spine shall not contest any offset imposed or any collection undertaken by the Government pursuant to this Paragraph, either administratively or in any Federal or State court. In addition, Life Spine shall pay the Government all reasonable costs of collection and enforcement under this Paragraph, including attorneys' fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this Paragraph, Life Spine shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct.

14. The Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation; the Relators agree and confirm 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. Life Spine waives and shall not assert any defenses it 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.

16. Life Spine, having truthfully admitted to the conduct set forth in Paragraph 2 above (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 Life Spine or 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 Paragraphs 13 above, or seek other appropriate relief from the Court. Before pursuing any remedy, the Government shall notify Life Spine that it has determined that Life Spine has made a Contradictory Statement. Upon receiving such notice from the Government, Life Spine may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If Life Spine learns of a potential Contradictory Statement by its attorneys, agents, officers, or employees, Life Spine 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 Life Spine for the purpose of this Stipulation, or whether Life Spine 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, Life Spine may raise defenses and/or assert affirmative claims or defenses in any proceedings brought by private and/or public parties, so long as doing so would not contradict the Admitted Conduct.

17. Life Spine represents and warrants that it has reviewed its financial situation, that it is currently not insolvent as such term is defined in 11 U.S.C. § 101(32), and that it reasonably believes it shall remain solvent following payment to the Government of the settlement amounts referenced in Paragraphs 3 above. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Life Spine, within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Life Spine was or became indebted to on or after the date of this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

18. If within 91 days of the Effective Date of this Stipulation or any payment made under this Stipulation, Life Spine commences any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or a third party commences any case, action, or other proceeding under any law related to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of Life Spine's debts, or seeking to adjudicate Life Spine as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Life Spine or for all or part of Life Spine's assets, Life Spine agrees as follows:

- a. Life Spine's obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and Life Spine shall not argue or otherwise take the position in any such case, action, or proceeding that (i) Life Spine's obligations under

this Stipulation may be avoided under 11 U.S.C. § 547; (ii) Life Spine is insolvent at the time this Stipulation was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to Life Spine.

- b. If any of Life Spine'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, the Government, at its option, may rescind the release in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Life Spine for the claims that would otherwise be covered by the release in Paragraph 7 above. Life Spine agrees that (i) any such claim, action, or proceeding brought by the Government would not be subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the case, action, or proceeding described in the first sentence of this Paragraph, and Life Spine shall not argue or otherwise contend that the Government's claim, action, or proceeding is subject to an automatic stay; (ii) Life Spine shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the Government within 60 calendar days of written notification to Life Spine that the release has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date the Relator Complaint was filed; and (iii) the Government has a valid claim against Life Spine in the amount of the settlement amount set forth in Paragraph 3 above

and the Government may pursue its claim in the case, action, or proceeding described in the first sentence of this Paragraph, as well as in any other case, action, or proceeding.

- c. Life Spine acknowledges that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

19. Life Spine 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Life Spine, including Life Spine's 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) Life Spine'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 Life Spine makes to the United States pursuant to this Stipulation and any payment Life Spine may make to the Relators, including expenses, costs and attorneys' fees;



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

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Life Spine, and Life Spine shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, Life Spine shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs (as defined in this Paragraph) included in payments previously sought by Life Spine from the United States. Life Spine agrees that the United States, at a minimum, shall be entitled to recoup from Life Spine any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. Any payments due 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 right to audit, examine, or re-examine Life Spine’s books and records and to disagree with any calculation submitted by Life Spine or any of Life Spine’s subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Life Spine, 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 United States to audit, examine, or re-examine Life Spine'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. Life Spine 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.

22. 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 the Relators from seeking to recover their expenses or attorneys' fees and costs from Life Spine pursuant to 31 U.S.C. § 3730(d).

23. 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.

24. 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. 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.

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 Life Spine's successors, transferees, heirs, and assigns.

28. This Stipulation is binding on the Relator's 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  
Jennifer Jude, Esq.  
Jeffrey K. Powell, Esq.  
Lara K. Eshkenazi, Esq.  
Assistant United States Attorneys  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, Third Floor  
New York, New York 10007  
Telephone: (212) 637-2663/2706/2758  
Email: [Jennifer.Jude@usdoj.gov](mailto:Jennifer.Jude@usdoj.gov)

Jeffrey.Powell@usdoj.gov  
Lara.Eshkenazi@usdoj.gov

TO DEFENDANT LIFE SPINE, INC.:

Jaimie Nawaday, Esq.  
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Email: jnawaday@kelleydrye.com

TO RELATORS:

Stephen A. Weiss, Esq.  
Christopher L. Ayers, Esq.  
Seeger Weiss LLP  
77 Water Street, 8<sup>th</sup> Fl.  
New York, NY 10005  
Phone: 212-584-0700  
Email: sweiss@seegerweiss.com  
cayers@seegerweiss.com

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

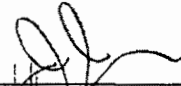
Agreed to by:

**THE UNITED STATES OF AMERICA**

Dated: October 23, 2019

GEOFFREY S. BERMAN  
United States Attorney for the  
Southern District of New York

By:

  
\_\_\_\_\_  
Jennifer Jude, Esq.  
Jeffrey K. Powell, Esq.

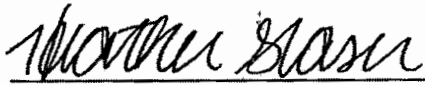
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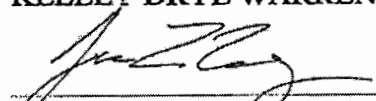
**DEFENDANT**

Dated: October 23, 2019

DEFENDANT LIFE SPINE, INC.

By:   
Heather Glaser  
General Counsel

KELLEY DRYE WARREN LLP

By:   
Jaimie Nawaday, Esq.  
101 Park Avenue  
New York, NY 10178  
Phone: 212-808-7695  
Email: [jnawaday@kelleydrye.com](mailto:jnawaday@kelleydrye.com)  
*Attorneys for Life Spine, Inc.*

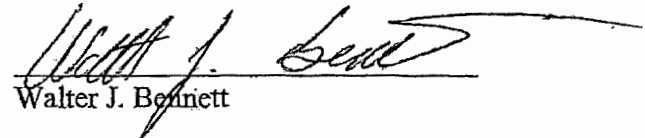
**RELATOR**

Dated: October 19, 2019

RELATOR BNHT LLC

By:

\_\_\_\_\_  
Christopher L. Ayers, Esq.  
Manager

  
\_\_\_\_\_  
Walter J. Bennett

\_\_\_\_\_  
Jon Nolan

\_\_\_\_\_  
Larry Harvey

\_\_\_\_\_  
Cameron Thrall

SEEGER WEISS LLP

By:

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Stephen A. Weiss, Esq.  
Christopher L. Ayers, Esq.  
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[cayers@seegerweiss.com](mailto:cayers@seegerweiss.com)

*Attorneys for Relator BNHT LLC, Walter J.  
Bennett, Jon Nolan, Larry Harvey, and  
Cameron Thrall*

**RELATOR**

Dated: October 20, 2019

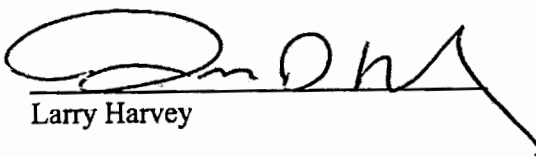
RELATOR BNHT LLC

By:

\_\_\_\_\_  
Christopher L. Ayers, Esq.  
Manager

\_\_\_\_\_  
Walter J. Bennett

\_\_\_\_\_  
Jon Nolan

  
\_\_\_\_\_  
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[cayers@seegerweiss.com](mailto:cayers@seegerweiss.com)

*Attorneys for Relator BNHT LLC, Walter J. Bennett, Jon Nolan, Larry Harvey, and Cameron Thrall*



**RELATOR**


Dated: October 20, 2019

RELATOR BNHT LLC

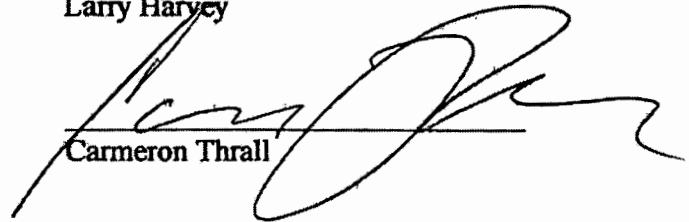
By:

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Christopher L. Ayers, Esq.  
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[cayers@seegerweiss.com](mailto:cayers@seegerweiss.com)

*Attorneys for Relator BNHT LLC, Walter J. Bennett, Jon Nolan, Larry Harvey, and Cameron Thrall*

**RELATOR**

Dated: October 21, 2019

RELATOR BNHT LLC

By:



Christopher L. Ayers, Esq.  
Manager

\_\_\_\_\_  
Walter J. Bennett

\_\_\_\_\_  
Jon Nolan

\_\_\_\_\_  
Larry Harvey

\_\_\_\_\_  
Cameron Thrall

SEEGER WEISS LLP

By:

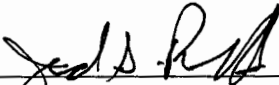


Stephen A. Weiss, Esq.  
Christopher L. Ayers, Esq.  
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[cayers@seegerweiss.com](mailto:cayers@seegerweiss.com)

*Attorneys for Relator BNHT LLC, Walter J. Bennett, Jon Nolan, Larry Harvey, and Cameron Thrall*

SO ORDERED:

  
\_\_\_\_\_  
HON. JED S. RAKOFF  
UNITED STATES DISTRICT JUDGE

Dated: 10/29/19  
New York, New York

# EXHIBIT A

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

UNITED STATES OF AMERICA and the  
STATES of COLORADO, CONNECTICUT,  
THE DISTRICT OF COLUMBIA, FLORIDA,  
ILLINOIS, INDIANA, MARYLAND,  
MASSACHUSETTS, NEW JERSEY, NEW  
YORK, OHIO, OKLAHOMA, TEXAS, AND  
VIRGINIA *ex rel.* BNHT LLC,

Plaintiffs,

v.

LIFE SPINE INC., MICHAEL BUTLER, and  
JOSEPH LOY,

Defendants.

**18 Civ. 1311 (JSR)**

UNITED STATES OF AMERICA,

Plaintiff-Intervenor

v.

LIFE SPINE, INC., MICHAEL BUTLER, and  
RICHARD GREIBER,

Defendants.

**CONSENT JUDGMENT**

Upon the consent of Plaintiff the United States of America and defendant Life Spine,  
Inc., it is hereby

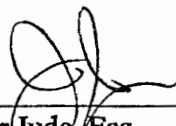
ORDERED, ADJUDGED and DECREED: that plaintiff the United States of America is awarded judgment in the amount of \$5,500,000 against Life Spine, Inc.

Agreed to by:

Dated: October 23, 2019

GEOFFREY S. BERMAN  
United States Attorney for the  
Southern District of New York

By:

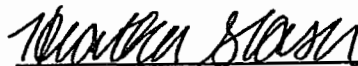


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[Lara.Eshkenazi@usdoj.gov](mailto:Lara.Eshkenazi@usdoj.gov)

Dated: October 23, 2019

DEFENDANT LIFE SPINE, INC.

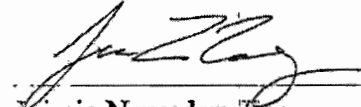
By:



\_\_\_\_\_  
Heather Glaser  
General Counsel

KELLEY DRYE WARREN LLP

By:

  
Jamie Nawaday, Esq.

101 Park Avenue

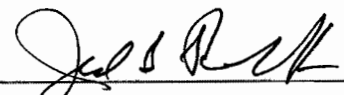
New York, NY 10178

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Email: [jnawaday@kelleydrye.com](mailto:jnawaday@kelleydrye.com)

*Attorneys for Life Spine, Inc.*

SO ORDERED:

  
HON. JED S. RAKOFF  
UNITED STATES DISTRICT JUDGE

Dated: 10/29, 2019  
New York, New York