

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the State of California acting through the California Department of Justice, Office of the Attorney General, Bureau of Medi-Cal Fraud and Elder Abuse (hereinafter referred to as “California”); and San Bernardino Convalescent Operations, Inc. dba Legacy Post-Acute Rehabilitation Center and Legacy Standard, Inc. (together hereinafter referred to as “Defendants”), acting through their authorized representatives. All named foregoing parties are hereinafter collectively referred to as the “Parties.”

RECITALS

A. Legacy Post-Acute Rehabilitation Center is a licensed skilled nursing facility located at 1335 North Waterman Avenue, San Bernardino, California 92404. The skilled nursing facility is licensed to operate in the State of California and to participate California’s Medicaid Program, 42 U.S.C. § 1396 et seq. (“Medi-Cal”).

B. Legacy Standard, Inc., is a California corporation located at 555 N. El Camino Real #A-442, San Clemente, California 92672. Legacy Standard, Inc., is the owner of Legacy Post-Acute Rehabilitation Center.

C. On May 28, 2020, California filed a complaint against Defendants in the Superior Court of Sacramento County captioned *State of California v. San Bernardino Convalescent Operations, Inc. dba Legacy Post-Acute Rehabilitation Center, et al.*, Case No. 34-2020-00279763, alleging violations of the California False Claims Act (Cal. Gov. Code §§ 12650 et seq.) and related causes of action (“the Action”).

D. California alleges in the Action that Defendants engaged in the following conduct: (1) on certain days from January 1, 2012 to December 31, 2012, Defendants placed

subacute care patients in non-approved, non-subacute-care beds (“improper bed placements”); and (2) on certain days from January 1, 2012 to December 31, 2013, Defendants failed to meet the required minimum nursing hours for the subacute care patients admitted in Legacy Post-Acute Rehabilitation Center (“understaffing”). California further alleges that Defendants submitted or caused to be submitted claims for payment to Medi-Cal related to the improper bed placements and understaffing. California alleges that these claims were false and fraudulent as a result of the improper bed placements and understaffing, and, as such, give rise to civil liability under the California False Claims Act, Cal. Gov. Code §§ 12650 et seq., and common law. The allegation that Defendants knowingly submitted or caused to be submitted false or fraudulent claims to Medi-Cal connected with the improper bed placements and understaffing shall be referred to as the “Covered Conduct.”

E. This Agreement is neither an admission of liability by Defendants, nor a concession by California that its claims are not well founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation related to the Covered Conduct, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. PAYMENT TERMS. Defendants agree to pay California the total sum of one million dollars (\$1,000,000.00) (“Settlement Amount”). A payment of \$100,000 shall be due by no later than 10 days after the Effective Date. Commencing 90 days after the Effective Date, interest shall accrue on any unpaid portion of the Settlement Amount at a rate of 3% per annum. The remaining Settlement Amount may be paid in installments as follows: (a) \$400,000.00 plus any accrued interest by no later than 100 days after the Effective Date, and (b) the remaining

unpaid balance of the Settlement Amount plus accrued interest by no later than nine months after the Effective Date. There shall be no penalty for Defendants' early payment of any installment due under this Agreement. Defendants' payments shall be made by electronic funds transfer pursuant to written instructions provided by California.

2. DISMISSAL. After the Parties execute this Agreement, California shall promptly file with the Court a Notice of Settlement of Entire Case (Judicial Council form #CM-200). The Form shall specify that the Agreement conditions dismissal of the Action on Defendants' making scheduled payments. The Form shall state that California will file a request for dismissal, if all required payments have been made, by no later than April 16, 2021.

3. DEFAULT. In the event of a payment default, without providing any notice or opportunity to cure, California may accelerate all of the remaining installments and declare the entire unpaid balance immediately due and payable, and proceed to enforce all rights and remedies under law or equity under this Agreement. The late or non-conforming tender of any installment shall not act to revive, or reinstate, the right to make periodic installments, or to defer payment of the total, and any payments received after the default shall be applied on account of the accrued interest and the balance to principal and without a waiver of the default or the right to collect the accelerated balance. Upon any default, all remaining unpaid amounts will accrue interest at a rate of 10% per annum commencing on the date of default until paid. The Parties agree that the increased interest rate upon default does not exceed a reasonable estimate of harm California could potentially suffer if Defendants default.

4. In the event of any default, in addition to its other legal remedies, California may elect to move under California Code of Civil Procedure section 664.6 for judgment to be entered against Defendants pursuant to the terms of this Agreement for the entire remaining balance

owed plus interest.

5. RELEASE. Subject to the exceptions in Paragraph 6 (concerning excluded claims), and conditioned upon Defendants' full payment of the Settlement Amount and applicable accrued interest, California releases Defendants from any civil or administrative monetary claim California has based on the Covered Conduct.

6. Notwithstanding Paragraph 5 of this Agreement, or any other term of this Agreement, the following claims of California are specifically reserved and are not released:

- a. Any liability arising under state revenue codes;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from any federal or state health care program;
- d. Any liability to California (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals except as expressly provided herein;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- j. Any civil or administrative liability that any person or entity, including any released entity, has or may have to California or to individual consumers or state program payers under any statute, regulation or rule not expressly covered by the release in Paragraph 5

above.

7. Defendants waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the U.S. Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by California concerning the characterization of the amounts paid herein for purposes of California's revenue code.

8. Defendants fully and finally release California and its agencies, officers, agents, employees, attorneys and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against California and its agencies, officers, agents, employees, attorneys and servants, related to the Covered Conduct, the Action, and California's investigation and prosecution related thereto. Defendants hereby expressly waive all rights they may have by virtue of Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Defendants' releases herein are intended to release claims that are both known and unknown and foreseen and unforeseen.

9. 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), TRICARE, FEHBP Carrier, the United

States Department of Veterans Affairs, Medi-Cal, or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor, TRICARE, FEHBP Carrier, the United States Department of Veterans Affairs, Medi-Cal, 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.

10. Defendants agree 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 Defendants, or their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) California's audit(s) and civil investigations(s) of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to California's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payments Defendants make to California pursuant to this Agreement;

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 Defendants, and Defendants 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 Defendants or any of Defendants' subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, VA or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA 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, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Defendants agree that the United States and California, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States or California pursuant to the direction of the United States Department of Justice and/or the affected agencies. The United States and California reserve their respective rights to disagree with any calculations submitted by Defendants or any of their subsidiaries' or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the

United States or California to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. Defendants agree to cooperate fully and truthfully with California's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of Defendants' directors, officers, and employees, and shall use Defendants' best efforts to make available, and to encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendants further agree to furnish California, upon request, complete and non-redacted copies of all non-privileged documents, reports, memoranda of interviews, and records in Defendants' possession, custody, or control concerning any investigation of the Covered Conduct that Defendants have undertaken, or that has been performed by another on Defendants' behalf.

12. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 13 (waiver for beneficiaries paragraph), below.

13. Defendants agree that they will waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payers based upon the claims defined as Covered Conduct.

14. Defendants consent to California's disclosure of this Agreement and information about this Agreement to the public.

15. Unless otherwise stated in this Agreement, each Party shall bear its own legal and

other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Defendants warrant that they have been represented by, and have sought and obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect of this Agreement. The Agreement was negotiated by the Parties and their respective counsel, each of whom had the opportunity to participate in the drafting thereof. Defendants hereby declare that the terms of this Agreement have been completely read, fully understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.

17. Each of the Parties and each signatory to this Agreement warrants and represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Each of the Parties further warrants and represents that no other Party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Agreement, and that no Party has relied on any inducements, promises, or representations made by any Party to this Agreement, or its representatives, or any other person, except as expressly set forth herein.

18. This Agreement is governed by the laws of the State of California. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the Superior Court in Sacramento County. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. The facsimile or electronic transmission of this signed Agreement shall be the same as delivery of an original signature.

21. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns. If any provision in this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

22. The prevailing party shall be entitled to recover from the losing party its attorneys' fees and costs incurred in any action or proceeding brought to enforce any right arising out of this Agreement.

23. The effective date ("Effective Date") of this Agreement is the date the Agreement is signed by the last of all Parties.

STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General of the State of California

DATED: 7/13/2020


BY:




Emmanuel R. Salazar
Deputy Attorney General
Bureau of Medi-Cal Fraud and Elder Abuse
Office of the Attorney General
California Department of Justice
Attorneys for the State of California

LEGACY POST-ACUTE REHABILITATION CENTER

DATED:


By: 
Name: JEFF HENDRICKSON
Job Title: CEO
Employer: _____

DATED: July 10, 2020

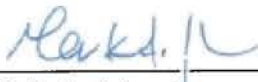
By: 
Mark A. Johnson
Hooper, Lundy & Bookman, P.C.
Attorney for Legacy Post-Acute Rehabilitation Center

LEGACY STANDARD, INC.

DATED:

By: 
Name: JEFF HENDRICKSON
Job Title: CEO
Employer: _____

DATED: July 10, 2020

By: 
Mark A. Johnson
Hooper, Lundy & Bookman, P.C.
Attorney for Legacy Post-Acute Rehabilitation Center