

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, and
STATE OF NEW YORK,
ex rel. LHCSA I LLC, LHCSA II LLC, AND
LHCSA III LLC,

Plaintiffs,

- against -

WHITE GLOVE COMMUNITY CARE
INC., *et al.*,

Defendant.

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**STIPULATION AND ORDER
FILED UNDER SEAL**

Civil Action No.
17-CV-2938

(Glasser, J)
(Scanlon, M.J.)

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively, the “United States”); the State of New York (the “State”), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“MFCU”); White Glove Community Care, Inc. (“White Glove”), and LHCSA I LLC, LHCSA II LLC, and LHCSA III LLC (collectively, “Relators”) (hereinafter, all of the above are collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Defendant White Glove, a for-profit corporation organized under the laws of the State of New York, is a licensed home care services agency as defined in Article 36 of the New

York Public Health Law Section 3206(13) (“LHCSA”) with its principal place of business located at 89 Bartlett Street, Brooklyn, NY 11206.

B. LHCSAs provide home health aide and personal care aide services to elderly and infirm individuals, including Medical Assistance Program (“Medicaid”) recipients, who require assistance with activities of daily living such as cooking, cleaning, dressing, and bathing. LHCSAs provide these services through aides sent to recipients’ homes.

C. During the period relevant to this Agreement, White Glove employed between one thousand and two thousand home care aides per year.

D. White Glove entered into contracts with Managed Long Term Care Plans as defined in Article 44 of the New York Public Health Law Section 4403-F (“MLTCPs”) to provide home health care services to Medicaid recipients in New York.

E. The New York Wage Parity Act, Public Health Law § 3614-c, established minimum wage and benefit requirements, effective March 1, 2012, for home care aides who render services to Medicaid recipients in New York City and effective March 1, 2013, for agencies providing home care services to Medicaid recipients in New York City, Nassau, Suffolk or Westchester Counties (the “Wage Parity Act”).

F. Pursuant to the Wage Parity Act, home care aides who perform Medicaid-reimbursed work in the covered area are to be compensated with an hourly base wage and a supplemental benefit, which is comprised of an additional wage component and a supplemental wage component (collectively, “Total Compensation”).

G. The Wage Parity Act applies equally to services provided by home care aides who work on episodes of care as direct employees of MLTCPs or as employees of LHCSAs. N.Y. Pub. Health Law § 3614-c(4).

H. The Wage Parity Act unequivocally states that neither MLTCPs nor LHCSAs shall receive payments from government agencies for any episode of care (i) furnished, in whole or in part, by any home care aide who is compensated at amounts less than the applicable minimum rate of Total Compensation and (ii) reimbursed in whole or in part by the New York Medicaid program. *Id.* at §§ 3614-c(2), (5), (9).

I. During the period relevant to this Agreement, LHCSAs were also required to provide quarterly certifications to the MLTCPs with which they contracted to provide home care services, attesting to the LHCSA's compliance with the terms of the Wage Parity Act. *Id.* at § 3614-c(6). The MLTCPs in turn filed annual certifications with the New York State Department of Health ("DOH") verifying that all episodes of care provided or arranged for by the MLTCPs complied with the Wage Parity Act. *Id.* at § 3614-c(5).

J. On May 15, 2017, Relators filed a complaint under the *qui tam* provisions of the federal False Claims Act ("FCA"), 31 U.S.C. § 3730(b) and the New York False Claims Act ("NY FCA"), N.Y. State Fin. Law § 187 *et seq.*, captioned *United States of America and the State of New York ex rel. LHCSA I LLC, et al. v. White Glove Community Care Inc., et al.*, in the United States District Court for the Eastern District of New York (Civil Action No. 17-cv-2938) (Glasser, J.) (the "Civil Action"). Relators alleged, *inter alia*, that defendant White Glove violated the FCA and NY FCA by submitting claims to MLTCPs for home care services provided by aides who received less than the requisite Total Compensation as mandated by the Wage Parity Act.

K. Based on the investigation in the Civil Action, the United States and the State determined that White Glove caused the MLTCPs, with which White Glove contracted to provide home health care services, to submit Medicaid claims to fiscal agents of the State of New York pursuant to Social Services Law and the Public Health Law of the State of New York during the

period from March 1, 2012 through December 31, 2018 (“Claims Period”) to which it was not entitled. These claims were relied upon by fiscal agents of the State to pay the MLTCPs, which, in turn, paid White Glove for services on dates occurring during the Claims Period. The United States and the State will partially intervene in the Civil Action for the purpose of settlement.

L. As a result, the United States and the State contend that they have certain civil claims against White Glove arising from White Glove’s conduct during the Claims Period (hereinafter referred to in this Recital L as the “Covered Conduct”):

- (1) White Glove did not pay its home care aides the requisite Total Compensation pursuant to the Wage Parity Act;
- (2) White Glove sought payment from Medicaid, and received payment thereon, through MLTCPs, for episodes of care performed by home care aides, whom White Glove did not properly compensate under the Wage Parity Act;
- (3) White Glove certified compliance with the Wage Parity Act to the MLTCPs with which it had contracted to provide care to Medicaid recipients; and
- (4) In reliance on these certifications, the MLTCPs submitted annual certifications to DOH that all services provided by or arranged for by the MLTCPs were in full compliance with the Wage Parity Act.
- (5) White Glove admits, acknowledges, and accepts responsibility for the Covered Conduct.

M. Relators claim entitlement under 31 U.S.C. § 3730(d) and N.Y. State Fin. Law §§ 190(6) and (7) to a share of the proceeds of this Settlement Agreement and to Relators’ reasonable expenses, attorneys’ fees and costs.

N. White Glove has entered into an independent, separate agreement with the New York State Office of Attorney General Labor Bureau to resolve allegations that it violated New York's Wage Parity Act, Public Health Law § 3614-c ("the OAG Labor Bureau Agreement"). That separate agreement, to which the United States is not a party, requires White Glove to implement a program to ensure that it complies with the Wage Parity Act and to redress amounts owed to current and former employees of White Glove who are entitled to certain compensation under the Wage Parity Act by requiring White Glove to pay \$2,000,000.00. Such requirements arise solely from New York State law.

O. White Glove wishes to resolve its liability for the Covered Conduct, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. As payment to the United States and the State for the Covered Conduct, White Glove shall pay One Million Two Hundred Sixty-Four Thousand Forty-Two dollars and Forty-Five cents (\$1,264,042.45) (the "Total Settlement Amount"), plus interest at a rate of 3.26% per annum from the Effective Date of this Agreement (as defined in Paragraph 39 below) to the date of the final payment, in accordance with the payment plan set forth in Paragraphs 2 and 3 below.

2. White Glove shall pay to the United States a total of Five Hundred Five Thousand Six Hundred Sixteen dollars and Ninety-Eight cents (\$505,616.98) plus interest as set forth above ("Federal Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of New York, to be paid as follows ("Federal Installment Payments"):

- a. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) by December 9, 2022
- b. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) plus interest in the amount of \$1,683.21 by January 9, 2023
- c. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) plus interest in the amount of \$1,108.45 by February 9, 2023
- d. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) plus interest in the amount of \$1,108.14 by March 9, 2023
- e. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) plus interest in the amount of \$862.13 by April 9, 2023
- f. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) plus interest in the amount of \$763.60 by May 9, 2023
- g. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) plus interest in the amount of \$636.33 by June 9, 2023
- h. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) plus interest in the amount of \$459.80 by July 9, 2023
- i. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) plus interest in the amount of \$381.80 by August 9, 2023
- j. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) plus interest in the amount of \$246.32 by September 9, 2023
- k. Forty-Five Thousand Nine Hundred Sixty-Five dollars and Eighteen cents (\$45,965.18) plus interest in the amount of \$127.27 by October 9, 2023

The Federal Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

3. White Glove shall pay to the State a total of Seven Hundred Fifty-Eight Thousand Four Hundred Twenty-Five dollars and Forty-Seven cents (\$758,425.47) plus interest as set forth above (“State Settlement Amount”), by electronic funds transfer pursuant to written instructions to be provided by MFCU to be paid as follows (“State Installment Payments”):

- a. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) by December 9, 2022
- b. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) plus interest in the amount of \$2,524.81 by January 9, 2023
- c. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) plus interest in the amount of \$1,662.68 by February 9, 2023
- d. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) plus interest in the amount of \$1,527.20 by March 9, 2023
- e. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) plus interest in the amount of \$1,293.20 by April 9, 2023
- f. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) plus interest in the amount of \$1,145.40 by May 9, 2023
- g. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) plus interest in the amount of \$954.50 by June 9, 2023
- h. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) plus interest in the amount of \$689.70 by July 9, 2023

- i. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) plus interest in the amount of \$572.70 by August 9, 2023
- j. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) plus interest in the amount of \$369.48 by September 9, 2023
- k. Sixty-Eight Thousand Nine Hundred Forty-Seven dollars and Seventy-Seven cents (\$68,947.77) plus interest in the amount of \$190.90 by October 9, 2023

The State Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

4. If White Glove is to be sold, acquired, merged, or transferred, or a significant portion of the assets of White Glove is to be sold, merged, or transferred into another non-affiliated entity, prior to the completion of the payments required under Paragraphs 2 and 3 above, White Glove shall provide the United States and the State thirty (30) days' notice prior to the effective date of the proposed sale, acquisition, merger, or transfer, and all remaining payments owed pursuant to the Settlement Agreement shall be accelerated and become due and payable on the effective date of the proposed sale, acquisition, merger, or transfer. Further, no current or former officer, director, employee, member, manager, or shareholder of White Glove may accept or receive any remuneration of consideration relating to any such sale, acquisition, merger, or transfer, including but not limited to, any portion of the proceeds of such sale, acquisition, merger, or transfer, directly or indirectly, until the Total Settlement Amount is paid in full.

5. In consideration for the United States' and the State's agreement to accept payment over time as delineated in paragraphs 2 and 3 above, the Parties agree that White Glove shall execute and the United States and the State shall file consent judgments (the stipulation for consent judgment is attached hereto as Attachment A) against White Glove in the amount of One Million Two Hundred Sixty-Four Thousand Forty-Two dollars and Forty-Five cents (\$1,264,042.45) less

any payments made, plus all costs of collection, including attorneys' fees and expenses incurred, post-judgment interest at the default rate referenced in Paragraph 6 below, and other proper relief without further notice to White Glove. The United States and/or the State, in their sole discretion, may exercise any rights granted by law or in equity to collect on the debt. White Glove agrees not to contest any consent judgment, offset, or any collection action undertaken by the United States and/or the State pursuant to this paragraph, either administratively or in any state or federal court. The United States and the State shall take all measures available to execute on the consent judgment.

6. In the event that White Glove fails to pay the Federal Settlement Amount or the State Settlement Amount as provided in the payment schedules set forth in Paragraphs 2 and 3 above, White Glove shall be in Default of White Glove's payment obligations ("Default"). The United States and the State will provide a written Notice of Default, and White Glove shall have an opportunity to cure such Default within seven (7) business days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to White Glove, or to such other representative as White Glove shall designate in advance in writing. If White Glove fails to cure the Default within seven (7) business days of receiving the Notice of Default and in the absence of an agreement with the United States and the State to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Total Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of twelve percent (12%) per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

7. In the event of Uncured Default, White Glove agrees that the United States or the State, at their sole discretion, may (i) execute upon the consent judgment provided under Paragraph 5 above, (ii) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against White Glove for the claims that would otherwise be covered by the releases provided in Paragraphs 12 and 13, below, with any recovery reduced by the amount of any payments previously made by White Glove to the United States and the State under this Agreement; (iii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iv) offset the remaining unpaid balance from any amounts due and owing to White Glove and/or affiliated companies by any department, agency, or agent of the United States or the State at the time of Default or subsequently; and/or (v) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States and the State 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 or the State pursues a collection action, White Glove agrees immediately to pay the United States and the State 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' and the State's reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States or the State opts to rescind this Agreement or file a civil action for the Covered Conduct pursuant to this paragraph, White Glove 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 are filed by the United States or the State related to the Covered Conduct, except to the extent these defenses were available on May 15, 2017. White Glove agrees not to contest any offset, recoupment, and/or

collection action undertaken by the United States or the State pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States or the State.

8. In the event of Uncured Default, OIG-HHS may exclude White Glove from participating in all Federal health care programs until White Glove pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to White Glove. White Glove waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, White Glove wishes to apply for reinstatement, it must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. White Glove will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

9. White Glove waives and shall not assert any defenses White Glove may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. The United States and the State agree to pay Relators eighteen percent (18%) of each Federal and State Installment Payment pursuant to the following conditions:

- a. Conditioned upon the United States receiving each Federal Installment Payment from White Glove as set forth in Paragraph 2 above, and as soon as feasible after receipt, the United States shall pay eighteen percent (18%) of each Federal Installment Payment to Relators by electronic funds transfer pursuant to written instructions to be provided by Relators.
- b. Conditioned upon the State receiving each State Installment Payment from White Glove as set forth in Paragraph 3 above, and as soon as feasible after receipt, the State shall pay eighteen percent (18%) of each State Installment Payment to Relators by check, pursuant to written instructions provided by counsel for Relators.

11. White Glove shall pay Thirty Thousand dollars (\$30,000.00) to Relators for expenses, and attorneys' fees and costs.

12. Subject to the exceptions in Paragraph 15 (concerning reserved claims), Paragraph 6 (concerning default), and Paragraph 20 (concerning bankruptcy proceedings), and conditioned upon White Glove's full payment of the Federal Settlement Amount to the United States, the United States releases White Glove from any civil or administrative monetary claims the United States has for the Covered Conduct under the FCA, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

13. Subject to the exceptions in Paragraph 15 (concerning reserved claims), Paragraph 6 (concerning default), and Paragraph 20 (concerning bankruptcy proceedings), and conditioned upon White Glove's full payment of the State Settlement Amount to the State, the State releases White Glove from any civil monetary claim it has for the Covered Conduct under the NY FCA;

N.Y. Exec. Law § 63(12); N.Y. Soc. Servs. Law § 145-b; or the common law theories of payment by mistake, unjust enrichment and fraud.

14. Subject to the exceptions in Paragraph 15 (concerning reserved claims), Paragraph 6 (concerning default), and Paragraph 20 (concerning bankruptcy) and conditioned upon White Glove's full payment of the Total Settlement Amount and expenses, fees and costs referenced in Paragraph 11, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release White Glove from any civil monetary claims the Relators have on behalf of the United States for the Covered Conduct under the FCA, 31 U.S.C. §§ 3729-3733, and on behalf of the State for the Covered Conduct under the NY FCA.

15. Notwithstanding the releases given in Paragraphs 12, 13, and 14 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State are specifically reserved and not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any civil, criminal or administrative liability arising under State revenue codes;
- c. Any criminal liability;
- d. Any liability of individuals;
- e. Any liability for personal injury, patient abuse or neglect arising from the Covered Conduct;
- f. Any civil or administrative liability White Glove has or may have to the State or to individual consumers or State program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 13 above, including but not limited to, any and all claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

- g. Any liability which may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid program on a capitated basis, other than liability of White Glove to the State for the Covered Conduct;
- h. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs and the State's Medicaid Program;
- i. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- j. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct; and
- k. Any liability based upon obligations created by this Agreement.

16. Relators and their heirs, successors, attorneys, agents and assigns shall not object to the Agreement but rather, agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to U.S.C. § 3730 (c)(2)(B) and N.Y. State Fin. Law § 190 (5)(b)(ii). Conditioned upon Relators' receipt of the payments described in Paragraph 10 above, Relators and their heirs, successors, attorneys, agents and assigns fully and finally release, waive, and forever discharge the United States and the State, as well as their agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action against White Glove or, with respect to White Glove, any claims arising under 31 U.S.C. § 3730, N.Y. State Fin. Law § 190, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action against White Glove.

17. White Glove fully and finally releases the United States and the State, and their agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees and

costs, and expenses of every kind and however denominated) that White Glove has asserted, could have asserted, or may assert in the future against the United States, the State or their agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' or the State's investigation and prosecution thereof.

18. White Glove fully and finally releases Relators from any claims (including attorneys' fees, costs and expenses of every kind and however denominated) that White Glove has asserted, could have asserted, or may assert in the future against Relators, related to the Covered Conduct, the Civil Action, and the Relators' investigation and prosecution thereof.

19. 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, or carrier) or state payor, related to the Covered Conduct; and White Glove agrees not to resubmit to any Medicare contractor or state payor any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials or claims, and agrees to withdraw any such pending appeals.

20. In exchange for valuable consideration provided in this Agreement, White Glove and Relator acknowledge the following:

- a. White Glove 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 and the State of the Total 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 White Glove, 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 White Glove was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).
- e. If White Glove's obligations under this Agreement 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 Total Settlement Amount is paid in full, White Glove or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of White Glove's debts, or to adjudicate White Glove as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for White Glove or for all or any substantial part of White Glove's assets, (i) the United States and the State may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against White Glove for the claims that would otherwise be covered by the releases provided in Paragraphs 12 and 13 above; (ii) the United States and the State have an undisputed, noncontingent, and liquidated allowed claim against White Glove in the

amount of Three Million Seven Hundred Ninety-Two Thousand One Hundred and Twenty-Seven dollars and Thirty-Five cents (\$3,792,127.35) plus penalties, less any payments received pursuant to this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States or the State by White Glove, a receiver, trustee, custodian, or other similar official for White Glove; (iii) if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States and the State shall not be responsible for the return of any amounts already paid by the United States or the State to the Relator; and (iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States or the State to the Relator pursuant to Paragraphs 2 and 3 are recovered from the United States or the State in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment made under this Agreement, Relator shall, within thirty days of written notice from the United States or the State to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States and return to the State all amounts recovered from the State.

- f. White Glove agrees that any civil and/or administrative claim, action or proceeding brought by the United States or the State under Paragraph 20.e 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' and the State's police and regulatory

power. White Glove shall not argue or otherwise contend that the United States' or the State's 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). White Glove 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 or the State within 120 days of written notification to White Glove that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on May 15, 2017. However, notwithstanding the foregoing, White Glove does not warrant or represent the outcome or determination of any United States' Bankruptcy Court proceeding.

21. White Glove agrees to the following:
 - a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of White Glove, its present or former officers, directors, employees, shareholders, and agents in connection with:
 - (1) the matters covered by this Agreement and the OAG Labor Bureau Agreement;
 - (2) the United States' and the State's audit(s) and civil investigation(s) of the matters covered by this Agreement;

- (3) White Glove's investigation, defense, and corrective actions undertaken in response to the United States' and the State's audit(s) and civil investigations(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payments White Glove makes to the United States and the State pursuant to this Agreement and any payments White Glove makes to Relators, including costs and attorneys' fees

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP") (hereinafter referred to as "Unallowable Costs").

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by White Glove, and White Glove shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid Program or any MLTCP, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by White Glove or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: White Glove further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicaid fiscal intermediaries, carriers, and/or contractors, and Medicaid 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 White Glove or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. White Glove agrees that the United States and the State, at a minimum, shall be entitled to recoup from White Glove 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.

- d. 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, and to the State. The United States and the State reserve their rights to disagree with any calculations submitted by White Glove or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on White Glove's or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.
- e. Nothing in this Agreement shall constitute a waiver of the rights of the United States and the State to audit, examine, or re-examine White Glove's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

22. White Glove agrees to cooperate fully and truthfully with the United States' and the State's investigations of individuals and entities not released in this Agreement. Upon reasonable notice, White Glove shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. White Glove further agrees to furnish to the United States and the State, 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 it has undertaken, or that has been performed by another on its behalf.

23. 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 24 (concerning waiver for beneficiaries), below.

24. White Glove agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as the Covered Conduct.

25. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement independently creates any obligation on behalf of White Glove to an MLTCP in connection with the Covered Conduct, or is intended to prohibit White Glove from denying or defending any claim by an MLTCP of an overpayment obligation arising from the Covered Conduct.

26. Upon receipt of the final payments described in Paragraphs 2 and 3, above, the United States and the State shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action as to White Glove pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii).

27. Except as identified in Paragraph 11, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation of and performance of this Agreement.

28. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

29. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of New York.

30. 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.

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

32. The undersigned counsel represents and warrants that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

33. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

34. This Agreement is binding on White Glove's successors, transferees, heirs, and assigns.

35. This Agreement is binding on Relators' successors, transferees, heirs and assigns.

36. All Parties consent to the United States' and the State's disclosure of this Agreement, and information about this Agreement, to the public. White Glove agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis.

37. Any failure by the United States or the State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the United States and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

38. Any notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be emailed to the email address below, followed by postage prepaid mail to the address as follows:

IF TO THE ATTORNEY GENERAL:

Chief, Civil Enforcement Division
Medicaid Fraud Control Unit
New York State Office of the Attorney General
28 Liberty Street, 13th Floor
New York, New York 10005
Telephone: (212) 517-5300

IF TO THE UNITED STATES:

U.S. Attorney's Office, Eastern District of New York Attn: Chief, Civil Health Care Fraud
271-A Cadman Plaza East, 7th Floor
Brooklyn, New York 11201
Telephone: 718-254-6050
Richard.Hayes@usdoj.gov

IF TO WHITE GLOVE:


Jennie L. Shufelt, Esq.

Hinman Straub, P.C.
121 State Street
Albany, New York 12207
Telephone: 518-436-0751
Jshufelt@hinmanstraub.com

39. This Agreement is effective on the date of the last signature to the Agreement (“Effective Date of this Agreement”). Electronic transmissions of signatures shall constitute acceptable, binding signatures for the purpose of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

BREON PEACE
United States Attorney
MICHAEL
BY: BLUME 
MICHAEL S. BLUME
SEAN P. GREENE-DELGADO
Assistant United States Attorneys
Eastern District of New York

DATED: 11/29/22

BY: Lisa M. Re /seg
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE STATE OF NEW YORK

LETITIA JAMES
Attorney General of the State of New York

DATED: 11/29/2022

BY: Ting Ting Tam
JILL D. BRENNER
HILLARY GRAY CHAPMAN
TING TING TAM
Special Assistant Attorneys General

DEFENDANT WHITE GLOVE

DATED: _____

BY: _____
Moshe Stareshesky, CEO
WHITE GLOVE COMMUNITY CARE INC.

DATED: _____

BY: _____
Jennie L. Shufelt, Esq.
HINMAN STRAUB, P.C.
Counsel for White Glove Community Care Inc.

LHCSA I LLC, LHCSA II LLC and LHCSA III LLC- RELATORS

DATED: 11/22/22

BY: 
Andrea Fischer, Esq.
FISCHER LEGAL GROUP
Counsel for Relators

Dated: _____, 2022
New York, New York

SO ORDERED:

HON. I. LEO GLASSER
UNITED STATES DISTRICT JUDGE

DATED: _____


BY: _____
JILL D. BRENNER
HILLARY GRAY CHAPMAN
TING TING TAM
Special Assistant Attorneys General

DEFENDANT WHITE GLOVE

DATED: 11-22-22

BY: 
Moshe Stareshefsky, CEO
WHITE GLOVE COMMUNITY CARE INC.

DATED: 11.22.22

BY: 
Jennie L. Shufelt, Esq.
HINMAN STRAUB, P.C.
Counsel for White Glove Community Care Inc.

LHCSA I LLC, LHCSA II LLC and LHCSA III LLC- RELATORS

DATED: _____

BY: _____
Andrea Fischer, Esq.
FISCHER LEGAL GROUP
Counsel for Relators

Dated: _____, 2022
New York, New York

SO ORDERED:

HON. I. LEO GLASSER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA, and
STATE OF NEW YORK,
ex rel. ,

**STIPULATION TO ENTER
CONSENT JUDGMENT**

Civil Action No.
17-CV-2938

- against -

WHITE GLOVE COMMUNITY CARE
INC., *et al.*,

(Glasser, J)
(Scanlon, M.J.)

Defendant.

----- X

STIPULATION TO ENTER CONSENT JUDGMENT

WHEREAS, the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively, the “United States”); the State of New York (the “State”), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“MFCU”); White Glove Community Care Inc. (“White Glove”), and LHCSA I LLC, LHCSA II LLC, and LHCSA III LLC entered in a settlement agreement effective November __, 2022 (the “Settlement Agreement”) to resolve, for certain “Covered Conduct” as defined by the Settlement Agreement, claims asserted on behalf of the United States and the State against White Glove under the federal and New York False Claims Acts; the federal Civil Monetary Penalties Law; the federal Program Fraud Civil Remedies Act; the New York Executive Law; the New York Social Services Law; and the common law;

WHEREAS, the Settlement Agreement, at Paragraphs 2 and 3, requires White Glove to make payments to the United States and to the State totaling \$1,264,042.45 over a period of time (by no later than October 9, 2023), with interest accruing at 3.26% on an annual basis;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties that:

In accordance with Paragraph 5 of the Settlement Agreement, a Judgment will be entered against White Glove in the amount of One Million Two Hundred Sixty-Four Thousand Forty-Two dollars and Forty-Five cents (\$1,264,042.45) less any payments made, plus all costs of collection, including attorneys' fees and expenses incurred, and post-judgment interest of 12% per annum, compounded daily from the date of Default as defined in Paragraph 6 of the Settlement Agreement.

The total amount shall be payable to the United States and the State pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of New York and by MFCU.

[SIGNATURES ON FOLLOWING PAGE]

[SIGNATURE PAGE FOR STIPULATION TO ENTER CONSENT JUDGMENT IN
CIVIL ACTION NUMBER 17-CV-2938]

THE UNITED STATES OF AMERICA

DATED: _____

BREON PEACE
United States Attorney

BY: _____

MICHAEL S. BLUME
SEAN P. GREENE-DELGADO

THE STATE OF NEW YORK

LETITIA JAMES
Attorney General of the State of New York

DATED: 11/29/2022

BY: _____

Ting Ting Tam
JILL D. BRENNER
HILLARY GRAY CHAPMAN
TING TING TAM
Special Assistant Attorneys General

DEFENDANT WHITE GLOVE

DATED: 11.22.22

BY: _____

J. Shufelt
Jennie L. Shufelt, Esq.
HINMAN STRAUB, P.C.
Counsel for White Glove Community Care Inc.

[SIGNATURE PAGE FOR STIPULATION TO ENTER CONSENT JUDGMENT IN
CIVIL ACTION NUMBER 17-CV-2938]

THE UNITED STATES OF AMERICA

DATED: _____

BREON PEACE
United States Attorney

BY: MICHAEL BLUME
Digitally signed by MICHAEL BLUME
Date: 2022.11.29 13:34:16 -05'00'

MICHAEL S. BLUME
SEAN P. GREENE-DELGADO

THE STATE OF NEW YORK

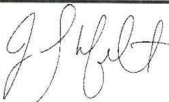
LETITIA JAMES
Attorney General of the State of New York

DATED: _____

BY: _____
JILL D. BRENNER
HILLARY GRAY CHAPMAN
TING TING TAM
Special Assistant Attorneys General

DEFENDANT WHITE GLOVE

DATED: 11.22.22

BY: 

Jennie L. Shufelt, Esq.
HINMAN STRAUB, P.C.
Counsel for White Glove Community Care Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA, and
STATE OF NEW YORK,
ex rel. ,

JUDGMENT

Civil Action No.
17-CV-2938

- against -

WHITE GLOVE COMMUNITY CARE
INC., *et al.*,

(Glasser, J)
(Scanlon, M.J.)

Defendant.

----- X

JUDGMENT

After consideration of the Stipulation to Enter Consent Judgment as agreed to by the United States of America, the State of New York, and White Glove Community Care Inc., it is hereby ORDERED that Judgment is entered in favor of the United States of America and the State of New York and against White Glove Community Care Inc. in the amount of One Million Two Hundred Sixty-Four Thousand Forty-Two dollars and Forty-Five cents (\$1,264,042.45) less any payments made, plus all costs of collection, including attorneys' fees and expenses incurred, and post-judgment interest of 12.0% per annum, compounded daily from the date of Default as defined in Paragraph 6 of the Settlement Agreement.

SO ORDERED:

Brooklyn, New York
_____, 2022

HONORABLE I. LEO GLASSER
United States District Judge, E.D.N.Y.