

SETTLEMENT AGREEMENT

This Settlement Agreement (“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), and the Defense Health Agency (DHA), acting on behalf of the TRICARE Program (collectively, the “United States”), Precision Medical Products, Inc., Jeremy Perkins, Marc Reynolds, Gant Van der Boom, Darleen Roland, and Jena Burns (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Precision Medical Products, Inc. (“PMP”) is a private California corporation that provides durable medical and orthotic equipment (“DME”) to Medicare and TRICARE beneficiaries. PMP’s current registered address is 2217 Plaza Dr., Rocklin, California 95765. Jeremy Perkins is the president of PMP, and Marc Reynolds is the president of billing operations at PMP. PMP, Mr. Perkins, and Mr. Reynolds are hereafter collectively referred to as the “PMP Defendants.”

B. On February 24, 2015, Gant Van der Boom, Darleen Roland and Jena Burns (collectively, the “Relators”) filed a *qui tam* action in the United States District Court for the Eastern District of California captioned *United States of America and State of California, ex rel. Gant Van Der Boom, Darleen Roland, and Jena Burns v. Precision Medical Products, Incorporated, A California Corporation, Jeremy Perkins, and Marc Reynolds*, Case No.: 2:15-cv-0428 MCE KJN, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b). Relators subsequently filed a First Amended Complaint on October 20, 2016, and a Second Amended Complaint on April 6, 2017 (the “Civil Action”).

C. The United States contends that the PMP Defendants submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”), and the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”).

D. The United States contends that it has certain civil claims against the PMP Defendants arising from the following conduct, during the period from October 1, 2011, through December 1, 2017:

- i. knowingly submitting, and causing others to submit, to the Medicare and TRICARE programs false or fraudulent claims for reimbursement for products and services PMP rendered to Medicare and TRICARE beneficiaries that were referred to PMP by independent contractors receiving commission payments from PMP based on the volume or value of their referrals to PMP in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2);
- ii. knowingly submitting, and causing others to submit, to the Medicare program false or fraudulent claims for reimbursement for products and services PMP rendered to Medicare beneficiaries where PMP improperly waived required patient co-payments to induce beneficiaries to use PMP in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2); and
- iii. knowingly submitting, and causing others to submit, to the Medicare and TRICARE programs false or fraudulent claims for reimbursement for products and services pursuant to prescriptions and Certificates of Medical Necessity that contained stamped, photocopied, and digitally forged physician signatures.

That conduct is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by the PMP Defendants nor a concession by the United States that its claims are not well founded.

F. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The PMP Defendants shall pay to the United States One Million Nine Hundred Thousand Dollars (\$1,900,000) ("Settlement Amount"), of which \$874,000 is restitution, no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of California.

2. Conditioned upon the United States receiving the Settlement Amount from the PMP Defendants and as soon as feasible after receipt, the United States shall pay Three Hundred Twenty-Three Thousand Dollars (\$323,000) to Relators by electronic funds transfer to Relators' counsel.

3. The PMP Defendants shall pay to the Relators One Hundred Thousand Dollars (\$100,000) as full compensation for Relators' expenses, attorneys' fees and costs ("Attorneys' Fees") no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Relators' counsel.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon the PMP Defendants' full payment of the Settlement Amount, the United States releases the PMP Defendants from any civil or administrative monetary claim the United

States has for the Covered Conduct under the False Claims Act, 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.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon the PMP Defendants' full payment of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release the PMP Defendants from any civil monetary claim the relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in paragraphs 4 through 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory and/or permissive exclusion from Federal health care programs;
- 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 Agreement;
- f. Any liability of individuals other than PMP Defendants;
- 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; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action. Relators mutually agree to distribute the payment received pursuant to Paragraph 2 equally among the Relators.

8. Conditioned upon the PMP Defendants' full payment of the Attorneys' Fees defined in Paragraph 3, Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release the PMP Defendants, and their officers, agents, and employees, from any liability to Relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

9. The PMP Defendants waive and shall not assert any defenses the PMP Defendants 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 PMP Defendants fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the PMP Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. The PMP Defendants fully and finally release the Relators from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the PMP Defendants have asserted, could have asserted, or may assert in the future against the Relators, related to the Civil Action and the Relators' investigation and prosecution thereof.

12. The PMP Defendants and Relators understand and acknowledge that if the facts and/or potential claims with respect to liability or damages regarding the matters released herein are found hereafter to be different from facts now believed to be true or claims now believed to be available ("Unknown Claims"), the PMP Defendants and Relators expressly accept and assume the risks of such possible difference in facts and/or potential claims and agree that this Agreement shall remain effective notwithstanding any such differences. The PMP Defendants and Relators intend by this Agreement, and the releases contained herein, to release fully, finally and forever all Unknown Claims against the United States, its agencies, officers, agents, employees, and servants that arise out of or relate to the matters released herein. The PMP Defendants and Relators expressly waive all rights they may have related to claims against the United States, its agencies, officers, agents, employees, and servants by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR.

The PMP Defendants and Relators also expressly waive all rights they may have related to claims against each other by virtue of Section 1542 of the California Civil Code.

13. 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 carrier or payer, or any state payer, related to the Covered Conduct; and the PMP Defendants agree not to resubmit to any Medicare contractor, TRICARE carrier or payer, or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

14. The PMP 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 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the PMP Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) the PMP Defendants' investigation, defense, and corrective actions undertaken in response to the United States' 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 payment the PMP Defendants make to the United States pursuant to this Agreement and any payments that the PMP Defendants may make to Relator, including costs and attorney's 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 the PMP Defendants, and the PMP 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 the PMP Defendants or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: the PMP 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 and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by the PMP Defendants or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. The PMP Defendants agree that

the United States, at a minimum, shall be entitled to recoup from the PMP Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by the PMP Defendants or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on the PMP Defendants or any of its 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 to audit, examine, or re-examine the PMP Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. The PMP Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, the PMP Defendants 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. The PMP Defendants further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by another on their behalf.

16. 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 17 (waiver for beneficiaries paragraph), below.

17. The PMP Defendants agree that they 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 payors based upon the claims defined as Covered Conduct.

18. Upon receipt of the payments described in Paragraphs 1 and 3, above, the United States and Relators shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action (the "Dismissal") pursuant to Rule 41(a)(1) as follows:

- a. with respect to the Covered Conduct as defined in this Agreement, the Dismissal shall be with prejudice as to Relators and the United States; and
- b. with respect to the remaining conduct alleged in the Civil Action, the Dismissal shall be with prejudice as to Relators and without prejudice as to the United States.

19. Other than the Attorneys' Fees provided for in Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

21. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of California. 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.

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

23. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

25. This Agreement is binding on the PMP Defendants' successors, transferees, heirs, and assigns.

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

27. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

28. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES

DATED: 5/4/18

BY: J. R. Edwards
JOHN R. EDWARDS
Assistant United States Attorney
Eastern District of California

DATED: _____

BY: _____
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

DATED: _____

BY: _____
LEIGH A. BRADLEY
General Counsel
Defense Health Agency
United States Department of Defense

PMP DEFENDANTS

DATED: _____

BY: _____
Precision Medical Products, Inc.
By its authorized representative

DATED: _____

BY: _____
Jeremy Perkins

DATED: _____

BY: _____
Marc Reynolds

Approved as to form and content:

DATED: _____

BY: _____
Brian M. Taylor
Boutin Jones Inc.
Counsel for the PMP Defendants

THE UNITED STATES

DATED: _____ BY: _____
JOHN R. EDWARDS
Assistant United States Attorney
Eastern District of California

DATED: 5/1/18 BY: Lisa M. Re
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

DATED: _____ BY: _____
LEIGH A. BRADLEY
General Counsel
Defense Health Agency
United States Department of Defense

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By its authorized representative

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Jeremy Perkins

DATED: _____ BY: _____
Marc Reynolds

Approved as to form and content:

DATED: _____ BY: _____
Brian M. Taylor
Boutin Jones Inc.
Counsel for the PMP Defendants

THE UNITED STATES

DATED: _____

BY: _____
JOHN R. EDWARDS
Assistant United States Attorney
Eastern District of California

DATED: _____

BY: _____
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

DATED: 04/30/2018

BY: 
for LEIGH A. BRADLEY
General Counsel
Defense Health Agency
United States Department of Defense

PMP DEFENDANTS

DATED: _____

BY: _____
Precision Medical Products, Inc.
By its authorized representative

DATED: _____

BY: _____
Jeremy Perkins

DATED: _____

BY: _____
Marc Reynolds

Approved as to form and content:

DATED: _____

BY: _____
Brian M. Taylor
Boutin Jones Inc.
Counsel for the PMP Defendants

THE UNITED STATES

DATED: _____

BY: _____
JOHN R. EDWARDS
Assistant United States Attorney
Eastern District of California

DATED: _____

BY: _____
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

DATED: _____

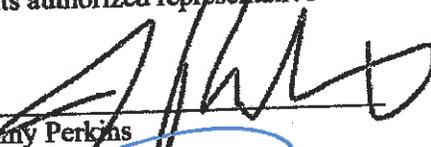
BY: _____
LEIGH A. BRADLEY
General Counsel
Defense Health Agency
United States Department of Defense

PMP DEFENDANTS

DATED: 4/27/18

BY: 
Precision Medical Products, Inc.
By its authorized representative

DATED: 4/27/18

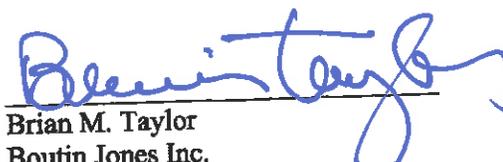
BY: 
Jeremy Perkins

DATED: 4/27/18

BY: 
Marc Reynolds

Approved as to form and content:

DATED: 4/27/18

BY: 
Brian M. Taylor
Boutin Jones Inc.
Counsel for the PMP Defendants

RELATORS

DATED: _____ BY: _____
Gant Van der Boom

DATED: 4-27-18 BY: Darleen Rolland
Darleen Rolland

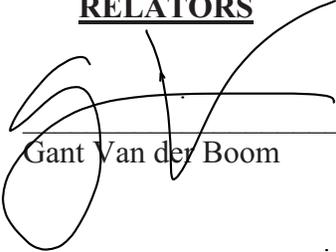
DATED: _____ BY: _____
Jena Burns

Approved as to form and content:

DATED: _____ BY: _____
Leslie S. Guillon
Arnold Law Firm
Counsel for Relators

RELATORS

DATED: 4/27/2018

BY: 

Gant Van der Boom

DATED: _____

BY: _____
Darleen Rolland

Darleen Rolland

DATED: _____

BY: _____
Jena Burns

Jena Burns

Approved as to form and content:

DATED: _____

BY: _____
Leslie S. Guillon
Arnold Law Firm
Counsel for Relators

Leslie S. Guillon
Arnold Law Firm
Counsel for Relators

RELATORS

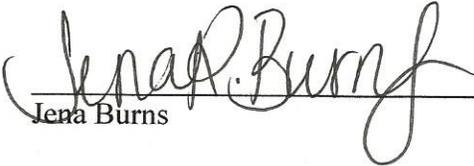
DATED: _____

BY: _____
Gant Van der Boom

DATED: _____

BY: _____
Darleen Rolland

DATED: 4/20/18

BY: 
Jena Burns

Approved as to form and content:

DATED: _____

BY: _____
Leslie S. Guillon
Arnold Law Firm
Counsel for Relators

RELATORS

DATED: _____ BY: _____
Gant Van der Boom

DATED: 4-27-18 BY: Darleen Rolland
Darleen Rolland

DATED: _____ BY: _____
Jena Burns

Approved as to form and content:

DATED: 4-27-18 BY: Leslie S. Guillon
Leslie S. Guillon
Arnold Law Firm
Counsel for Relators