

## 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") (collectively, "the United States"); the State of California, acting through the California Department of Justice, Office of the Attorney General, Bureau of Medi-Cal Fraud and Elder Abuse, and through the California Department of Health Care Services ("DHCS") (formerly known as the California Department of Health Services prior to July 1, 2007) (collectively, "California"); SCAN Health Plan ("SCAN"), Senior Care Action Network, and Scan Group ("the SCAN Parties"); and James M. Swoben ("Relator") (hereinafter collectively referred to as "the Parties"), through their authorized representatives. The United States and California are hereinafter collectively referred to as "the Governments."

### RECITALS

A. SCAN is a Medicare Advantage organization that indirectly provides healthcare services under the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1, and a prepaid health plan under the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5, in California ("Medi-Cal"). From January 1, 1985 through December 31, 2008, SCAN provided managed care benefits to Medicare and Medi-Cal beneficiaries who became SCAN members, and received capitated rate payments from Medicare and Medi-Cal for those SCAN members.

B. The Governments contend that from January 1, 1985 through December 31, 2008,

SCAN submitted or caused to be submitted claims for payment to the Medicare and Medi-Cal programs, and the Governments paid SCAN on those claims.

C. The Governments contend that they have certain civil claims against SCAN. Specifically, the Governments contend that they have claims against SCAN arising from the conduct described below (hereinafter collectively referred to as "the Covered Conduct"), which the Governments respectively allege:

1. From on or about January 1, 1985 through December 31, 2008, SCAN received capitated payments from California's Medi-Cal program for SCAN's Long Term Care Certified ("LTC") members. The Governments respectively contend that these payments were excessive and/or violated applicable contractual, statutory and regulatory requirements because of the following alleged conduct:

(a) The United States alleges: From on or about January 1, 1985 through December 31, 2008, the capitation rates set by the State of California for SCAN's LTC members were over the legal capitation rate allowed by California Welfare and Institutions Code § 14301(a), California Admin. Code Title 22 ("22 C.C.R.") § 53321(b), and, to the extent applicable, 22 C.C.R. § 53869(c). These over-the-legal-capitation amounts were set without certain adjustments to the initial base population costs of in-facility nursing home services, which adjustments were needed to arrive at base costs for those services that took into account SCAN's LTC members' actual utilization of in-facility nursing home services.

(b) In addition, the United States alleges: From on or about July 1, 2001 through December 31, 2007, SCAN received from California's Medi-Cal program, through California's payment of capitated rates for SCAN's LTC members, certain additional amounts

that were over the legal capitation rates allowed by California Welfare and Institutions Code § 14301(a), 22 C.C.R. § 53321(b), and, to the extent applicable, 22 C.C.R. § 53869(c). These additional over-the-legal-capitation amounts were set without certain adjustments to the base costs of in-facility nursing home services, which adjustments were needed to arrive at contract-adjusted base costs for those services that accounted for the fact, that during those years, SCAN's contracts with California required that SCAN dis-enroll each of its LTC members after that member had stayed in a nursing home for an additional month after the month of entry (except that from July 1, 2001 to July 31, 2003, the stay without disenrollment could be up to 100 days if the member required skilled nursing care reimbursed by Medicare).

(c) California alleges: From on or about January 1, 1985 through December 31, 2008, notwithstanding the fact that DHCS knew that SCAN was receiving both Medicare and Medi-Cal funds, SCAN failed to provide contractually required financial information to DHCS, thereby impairing DHCS from revising capitation rates for SCAN.

2. In addition, the United States alleges: For Medicare Part C payment years 2005 and 2006, SCAN retained coding consultants ("the SCAN coding consultants") to conduct retrospective blind reviews of the medical records underlying a number of specific encounters ("the Encounters") of SCAN members with severe illnesses and to identify diagnosis codes applicable to such encounters. Pursuant to the blind review protocol, the SCAN coding consultants were not provided with the diagnosis codes that the physicians for those members had previously identified for the Encounters. The SCAN coding consultants independently identified applicable diagnosis codes for the Encounters. SCAN provided to the United States Centers for Medicare and Medicaid Services ("CMS"), as corrections, the diagnosis codes that

the SCAN coding consultants had identified and that the physicians had not identified. As to the diagnosis codes that the physicians had previously identified, but that the SCAN coding consultants had failed to identify, SCAN failed to inform CMS that such codes might have needed to be withdrawn from SCAN's prior submissions to CMS for the Encounters. Had SCAN provided that information to CMS, Medicare Part C's capitated rate payments to SCAN based on the Encounters allegedly would have been lower than they were.

D. In addition, on July 13, 2009, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) and the California False Claims Act, California Government Code § 12652(c), James M. Swoben ("Relator") filed a *qui tam* action against the SCAN Parties and other defendants in the United States District Court for the Central District of California captioned *United States of America and State of California, ex rel. James M. Swoben v. Scan Health Plan; Senior Care Action Network; Scan Group; and [names of remaining defendants sealed]*, CV 09-5013 JFW ("the Civil Action").

E. The SCAN Parties deny the allegations of the Governments and of Relator. This Settlement Agreement is neither an admission of liability by the SCAN Parties, nor a concession by the Governments that their claims are not well founded.

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

#### TERMS AND CONDITIONS

1. Payment to the Governments. No later than ten (10) days after the Effective Date of this Agreement, SCAN shall pay to the Governments \$322,000,000.00, plus interest on that

Amount at a rate of 1.875 percent per year from May 1, 2012 ("handshake interest") (collectively, "the Settlement Amount") as follows: \$132,512,825.00, plus handshake interest, to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney for the Central District of California; and \$189,487,175.00, plus handshake interest, to California pursuant to written instructions to be provided by the California Attorney General's Office.

2. Relator's Statutory Expenses, Attorney's Fees, and Costs. The SCAN Parties and Relator will resolve the issue of Relator's expenses, attorney's fees, and costs, if any, under 31 U.S.C. § 3730(d)(1) and California Government Code § 12652(g)(8) separately from this Agreement. The SCAN Parties and Relator and his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights on that issue, and that no agreements concerning that issue have been reached to date.

3. Dismissal of the Civil Action. Upon receipt of the payment described in Paragraph 1 above, the Governments and Relator shall promptly sign a Notice of Dismissal of All Claims Against Defendants SCAN Health Plan, Senior Care Action Network, and SCAN Group Pursuant to Settlement Agreement; Consents of the United States and State of California Attorneys General Thereto; and [Proposed] Order Thereon ("Notice of Dismissal"), in the form attached hereto as Exhibit 1. The United States and California shall also sign a notice of their decision to intervene in the Civil Action, except as to the Ninth Claim for Relief of the Third Amended Complaint, as to which the United States shall decline to intervene. The United States shall then promptly file and/or lodge with the Court adjudicating the Civil Action the aforesaid signed notice of intervention and declination and the aforesaid signed Notice of Dismissal. The

Parties agree that if the two said documents are filed concurrently, the said Notice of Dismissal shall be deemed to have been filed after the said notice of intervention and declination. For purposes of any action, claim, proceeding, or dispute, other than the Civil Action, brought or asserted by the United States, or on behalf of the United States by any *qui tam* relator other than Relator, SCAN, Senior Care Action Network, and Scan Group (1) construe the Seventh Claim for Relief of the Second Amended Complaint in the Civil Action to include solely paragraphs 84 through 87 thereof, inclusive, and (2) construe the Seventh Claim for Relief of the Third Amended Complaint in the Civil Action to include solely paragraphs 88 through 91 thereof, inclusive.

4. The Governments' Releases of the SCAN Parties

a. Release of the SCAN Parties by the United States. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon SCAN's full payment of the Settlement Amount, the United States releases the SCAN Parties 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, both pre-amendment and as amended by the Fraud Enforcement and Recovery Act of 2009, Pub. L. 111-21, 123 Stat. 1617 (2009); 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 breach of contract, recoupment, unlawful payment, legally unauthorized payment, payment by mistake, unjust enrichment, and fraud.

b. Release of the SCAN Parties by California. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon SCAN's full payment of the Settlement Amount, California releases the SCAN Parties from any civil or administrative

monetary claim California has for the Covered Conduct under the California False Claims Act, Cal. Government Code §§ 12650-12656; or the common law theories of breach of contract, recoupment, unlawful payment, legally unauthorized payment, payment by mistake, unjust enrichment, and fraud.

5. Reservation of Rights to Administrative Actions

a. OIG-HHS Reservation of Rights. OIG-HHS expressly reserves all rights to institute, to direct, or to maintain any administrative action seeking exclusion against the SCAN Parties, and/or their respective officers, directors, and employees from Medicare, Medicaid, or other Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

b. Release of Administrative Actions by California. In consideration of the obligations of the SCAN Parties in this Agreement and SCAN's full payment of the Settlement Amount, California agrees to release the SCAN Parties from, and to refrain from instituting, directing, or maintaining against the SCAN Parties, any administrative action seeking permissive exclusion from Medi-Cal for the Covered Conduct. California expressly reserves all rights to comply with any mandatory statutory obligations to suspend or exclude the SCAN Parties from Medi-Cal or any other program based upon the Covered Conduct.

6. Exceptions to the Governments' Releases. Notwithstanding the releases given in this Agreement, or any other term of this Agreement, the following claims of the Governments are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) or under California's Taxation and Revenue Code;

- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal or state health care programs;
- d. Any liability to the United States (or its agencies) or to California (or its agencies) for any conduct other than (1) the Covered Conduct and (2) the conduct alleged as to the SCAN Parties in Relator's Complaints in the Civil Action, subject to the agreed construction, set forth in Paragraph 3 of this Agreement, of the Seventh Claim for Relief in the Second and Third Amended Complaints, and subject to subparagraph (e) below.
- e. Except as set forth in Paragraph C.2 of this Agreement, any liability arising under the Ninth Claim for Relief in the Third Amended Complaint.
- f. Any liability based upon obligations created by this Agreement;
- 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;
- j. Any liability of individuals;
- k. Any liability for SCAN's receipt of payments from Medi-Cal for services to beneficiaries who were receiving similar services from counties through the In-Home Support Services Program (IHSS);
- l. Any liability for SCAN's certifications of required nursing facility levels of care made on or after January 1, 2009.

7. Release of the SCAN Parties by Relator. In consideration of the obligations of the SCAN Parties in this Agreement, conditioned upon the full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to generally release, acquit, waive, and forever discharge the SCAN Parties and all the current and former officers and directors, employees, agents, attorneys, owners and shareholders of the SCAN Parties from any and all rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions and causes of action of every nature, whether known or unknown, suspected or unsuspected, in law or in equity from the beginning of the world to the day of these presents including but not limited to those he advanced or could have advanced in the Civil Action or otherwise under the False Claims Act, 31 U.S.C. §§ 3729-3733, for expenses or attorneys' fees and costs under 31 U.S.C. § 3730(h), or under 31 U.S.C. § 3730(h) for employment decisions by the SCAN Parties, under the California False Claims Act, Cal. Government Code §§ 12650-12656 and/or other statutory or common law doctrines of payment by mistake, unjust enrichment, breach of contract, fraud, or the like, *except, however, that* Relator does not release the aforesaid persons and entities from any liability they may have for payment of Relator's expenses, attorney's fees, and costs, if any, under 31 U.S.C. § 3730(d)(1) and California Government Code § 12652(g)(8). Except for the foregoing exception, the foregoing sentence is intended to be interpreted as a general release. Furthermore, except for the foregoing exception, Relator covenants not to sue the SCAN Parties, its current and former officers and directors, employees, agents, attorneys and shareholders of the SCAN Parties with respect to any and all rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions and causes of action of every nature, whether known or unknown,

suspected or unsuspected, in law or in equity, including those for attorneys' fees and costs arising prior to the Effective Date of this Agreement and not covered by 31 U.S.C. § 3730(d)(1) and California Government Code § 12652(g)(8).

8. Release of the Governments by the SCAN Parties. The SCAN Parties fully and finally release the Governments and their respective agencies, officers, agents, employees, and servants from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the SCAN Parties have asserted, could have asserted, or may assert in the future against the Governments and their respective agencies, officers, agents, employees, and servants related to, or arising out of, the Covered Conduct, the Civil Action, the Governments' investigation of the Covered Conduct and the Civil Action, and any ensuing civil prosecution.

9. This Agreement is Fair, Adequate and Reasonable. Relator and his heirs, successors, attorneys, agents, and assigns do not and shall not object to this Agreement, and instead agree and confirm that this Agreement and the settlement effectuated herein are fair, adequate, and reasonable under all of the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and California Government Code § 12652(e)(2)(B). The Governments and Relator and his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of his claims, and that no agreements concerning any Relator share have been reached to date. The Governments and Relator and his heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, nor any part of it, nor any intervention by the United States and/or California in the Civil Action in order to dismiss the Civil Action or for any other purpose, nor

any dismissal of the Civil Action, nor any other circumstance (1) shall waive or otherwise affect the ability of the Governments to contend that Relator is barred from sharing in any or all of the proceeds of this Agreement, or to contend that some or all of the Covered Conduct alleged in the Recitals, paragraph C of this Agreement is not alleged in Relator's Complaints in the Civil Action or (2) shall waive or otherwise affect Relator's ability to contend that he should share in any or all of the proceeds of this Agreement, or to contend that some or all of the Covered Conduct alleged in the Recitals, paragraph C of this Agreement is alleged in Relator's Complaints in the Civil Action.

10. Double Jeopardy and Excessive Fines Clauses. The SCAN Parties 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 United States Constitution, the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, or under Article 1, sections 15 and 24 of the California Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

11. No Characterization of Settlement Amount for the Purpose of Internal Revenue Laws. Nothing in the preceding Paragraph or in any provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. Denial of Claims. 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 carrier or intermediary or any state payer, related to the Covered Conduct; and the SCAN Parties agree not

to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

13. Unallowable Costs. The SCAN Parties 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 the SCAN Parties, and/or by their respective present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement ;
- (2) the Governments' audit(s) and civil and any criminal investigation(s) of any of the matters covered by this Agreement;
- (3) the SCAN Parties' investigation, defense, and corrective actions undertaken in response to the Governments' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment SCAN makes to the Governments pursuant to this Agreement and any payments that the SCAN Parties may make to Relator, 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), or any other federal or state program (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by the SCAN Parties, and the SCAN Parties shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States, California, 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 SCAN Parties or any of their respective subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs, or to any other federal or state program.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The SCAN Parties 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 included in payments previously sought from the United States, California, 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 SCAN Parties or any of their respective 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 SCAN Parties agree that the Governments, at a minimum, shall be entitled to recoup from them 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 Governments pursuant to the direction of the United States Department of Justice and/or the affected agencies. The Governments reserve their rights to disagree with any calculations submitted by the SCAN Parties or any of their respective subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on the SCAN Parties or any of their respective subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the Governments to audit, examine, or re-examine the SCAN Parties' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. Benefit of the Parties. 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 the Paragraph immediately below (waiver for beneficiaries Paragraph).

15. Waiver for Health Care Beneficiaries. The SCAN Parties 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.

16. Financial Condition. SCAN warrants that it has reviewed its financial situation and that it currently 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 Governments of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth

constitute a contemporaneous exchange for new value given to SCAN, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude 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 SCAN was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

17. Costs. With the exception of Relator's expenses, attorneys' fees, and costs, if any, under 31 U.S.C. § 3730(d)(1) and California Government Code § 12652(g)(8), each Party shall bear its and his own legal and other costs, fees, and expenses incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Governing Law. 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 Central District of California.

19. Voluntary Agreement. Each Party represents that it and he freely, voluntarily, knowingly, and deliberately enters into this Agreement without any degree of duress, compulsion, or misconduct by any of the Parties.

20. No Representations Outside this Agreement. Each of the Parties acknowledges that, except as expressly set forth in this Agreement, no representations of any kind or character have been made by any other party or that party's agents, representatives, or attorneys to induce execution or delivery of this Agreement.

21. Agreement Drafted by All Parties. This Agreement shall be deemed to have been

drafted by all Parties to this Agreement and therefore shall not be construed against any Party for reasons of drafting.

22. Complete Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and may not be modified, amended, or terminated except by a written agreement signed by the Parties specifically referring to this Agreement and its relevant portions.

23. The SCAN Parties' Successors, etc. This Agreement is binding on the SCAN Parties' respective successors, transferees, and assigns.

24. Relator's Successors, etc. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

25. Disclosure. All Parties consent to the Governments' disclosure of this Agreement, and information about this Agreement, to the public.

26. Headings. The headings in this Agreement are for convenience only, do not constitute a part of this Agreement, and shall not limit or affect any of its provisions.

27. Capacity to Execute. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below. The Relator represents that he has the full power, authority, and competence necessary to enter into this Agreement.

28. Counterparts and Facsimiles. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

29. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement").

In Witness Whereof, the Parties, through their duly authorized representatives, hereunder set their hands.

THE UNITED STATES OF AMERICA

DATED: 8/1/2012

BY:   
SUSAN R. HERSHMAN  
Assistant United States Attorney  
Central District of California

DATED: 8/1/2012

BY:   
JOHN E. LEE  
Assistant United States Attorney  
Central District of California

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
GREGORY E. DEMSKE  
Chief Counsel to the Inspector General  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

29. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement").

In Witness Whereof, the Parties, through their duly authorized representatives, hereunder set their hands.

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
SUSAN R. HERSHMAN  
Assistant United States Attorney  
Central District of California

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
JOHN E. LEE  
Assistant United States Attorney  
Central District of California

DATED: 8/1/12

BY: \_\_\_\_\_  
  
GREGORY E. DEMSKE  
Chief Counsel to the Inspector General  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

THE STATE OF CALIFORNIA

DATED: 7/30/12

BY: Brian V. Frankel  
BRIAN V. FRANKEL  
Supervising Deputy Attorney General  
State of California

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LORA FOX MARTIN  
Deputy Attorney General  
State of California

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
TOBY DOUGLAS  
Director  
Department of Health Care Services

SCAN HEALTH PLAN, SENIOR CARE ACTION NETWORK, and SCAN GROUP B  
DEFENDANTS

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_ of SCAN Health Plan

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_ of Senior Care Action Network

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_ of SCAN Group

THE STATE OF CALIFORNIA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
BRIAN V. FRANKEL  
Supervising Deputy Attorney General  
State of California

DATED: 7/30/12

BY:   
LORA FOX MARTIN  
Deputy Attorney General  
State of California

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
TOBY DOUGLAS  
Director  
Department of Health Care Services

SCAN HEALTH PLAN, SENIOR CARE ACTION NETWORK, and SCAN GROUP B  
DEFENDANTS

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_ of SCAN Health Plan

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_ of Senior Care Action Network

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_ of SCAN Group

THE STATE OF CALIFORNIA

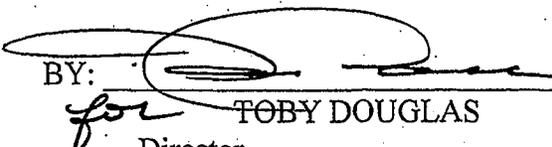
DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
BRIAN V. FRANKEL  
Supervising Deputy Attorney General  
State of California

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LORA FOX MARTIN  
Deputy Attorney General  
State of California

DATED: 7/31/12

BY:  \_\_\_\_\_  
*for* TOBY DOUGLAS  
Director  
Department of Health Care Services



SCAN HEALTH PLAN, SENIOR CARE ACTION NETWORK, and SCAN GROUP  
DEFENDANTS

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_ of SCAN Health Plan

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_ of Senior Care Action Network

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_ of SCAN Group

THE STATE OF CALIFORNIA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

BRIAN V. FRANKEL  
Supervising Deputy Attorney General  
State of California

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

LORA FOX MARTIN  
Deputy Attorney General  
State of California

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

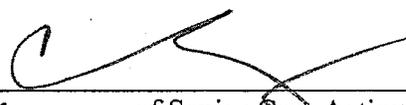
TOBY DOUGLAS  
Director  
Department of Health Care Services

SCAN HEALTH PLAN, SENIOR CARE ACTION NETWORK, and SCAN GROUP  
DEFENDANTS

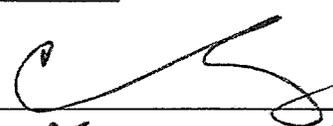
DATED: 8/2/2012

BY:  \_\_\_\_\_  
CEO of SCAN Health Plan

DATED: 8/2/2012

BY:  \_\_\_\_\_  
CEO of Senior Care Action Network

DATED: 8/2/2012

BY:  \_\_\_\_\_  
CEO of SCAN Group

DATED:

8/1/12

BY:



DAVID J. SCHINDLER  
Latham & Watkins  
Counsel for SCAN Health Plan, Senior Care  
Action Network, and Scan Group

DATED:

8/1/12

BY:



ROGER S. GOLDMAN  
Latham & Watkins  
Counsel for SCAN Health Plan, Senior Care  
Action Network, and Scan Group

JAMES M. SWOBEN - RELATOR

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

JAMES M. SWOBEN

Approved as to form and content:

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

WILLIAM HANAGAMI  
The Hanagami Law Firm  
A Professional Corporation  
Counsel for James M. Swoben

DATED: 7-30-12

BY:



ABRAM J. ZINBERG  
Counsel for James M. Swoben

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

DAVID J. SCHINDLER  
Latham & Watkins  
Counsel for SCAN Health Plan, Senior Care  
Action Network, and Scan Group

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

ROGER S. GOLDMAN  
Latham & Watkins  
Counsel for SCAN Health Plan, Senior Care  
Action Network, and Scan Group

JAMES M. SWOBEN - RELATOR

DATED: July 30 2012 BY: James Swoben  
JAMES M. SWOBEN

Approved as to form and content:

DATED: July 30, 2012 BY: William Hanagami  
WILLIAM HANAGAMI  
The Hanagami Law Firm  
A Professional Corporation  
Counsel for James M. Swoben

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

ABRAM J. ZINBERG  
Counsel for James M. Swoben

Exhibit 1



Defendants.

)  
)

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California corporation; [NAMES OF	)	GENERAL THERETO; AND
REMAINING DEFENDANTS	)	[PROPOSED] ORDER THEREON
SEALED];	)	
Defendants.	)	<b>[LODGED UNDER SEAL</b>
_____	)	<b>pursuant to the False Claim Act,</b>
	)	<b>31 U.S.C. § 3730(b)(2) and (3)]</b>

**[CAPTION ALSO MAY DESIGNATE  
OTHER DOCUMENTS FILED OR  
LODGED CONCURRENTLY]**

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, and subject to and in order to effectuate the settlement agreement among:

the Relator James M. Swoben (“Relator”); Defendants SCAN Health Plan, Senior Care Action Network, and SCAN Group (collectively, “the SCAN Defendants”); and the United States of America and the State of California (collectively, “the Governments”),

the Relator hereby, upon the Order of the Court herein:

Dismisses all claims for relief and causes of action filed in the above-captioned action against Defendants SCAN HEALTH PLAN, SENIOR CARE ACTION NETWORK, and SCAN GROUP, said dismissal being: (a) with prejudice as to the Relator; (b) without prejudice to the United States of America as to the Ninth Claim for Relief of the Third Amended Complaint; and (c) with prejudice to the Governments as to all other claims for relief and causes of action in

all Complaints filed in the above-captioned action against Defendants SCAN HEALTH PLAN, SENIOR CARE ACTION NETWORK, and SCAN GROUP, to the extent that those claims for relief and causes of action are, or purport to be, filed pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq.*, and the California False Claims Act, California Government Code § 12650 *et seq.*,

*Except that* the Relator does not dismiss the Relator's claim for a relator's share to be paid by the Governments, pursuant to 31 U.S.C. § 3730(d)(1) and California Government Code § 12652(g)(2). As to this claim, the Relator respectfully requests that the Court retain jurisdiction to determine, if necessary, the relator's share that the Relator should obtain pursuant to 31 U.S.C. § 3730(d)(1) and California Government Code § 12652(g)(2), and

*Except that* the Relator does not dismiss the Relator's claim for payment by any and all of the SCAN Defendants to the Relator of expenses, fees, and costs, pursuant to 31 U.S.C. § 3730(d)(1) and California Government Code § 12652(g)(8). As to this claim, the Relator respectfully requests that the Court retain jurisdiction to determine, if necessary, the appropriate expenses, fees, and

costs that the Relator should obtain pursuant to 31 U.S.C. § 3730(d)(1) and California Government Code § 12652(g)(8).

Respectfully submitted,

DATED: \_\_\_\_\_, 2012

WILLIAM HANAGAMI, ESQ.  
The Hanagami Law Firm

ABRAM J. ZINBERG, ESQ.  
Attorney at Law

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WILLIAM HANAGAMI, ESQ.  
Attorneys for Relator  
JAMES M. SWOBEN

CONSENT OF THE ATTORNEY GENERAL  
OF THE UNITED STATES OF AMERICA

Pursuant to 31 U.S.C. § 3730(b)(1), the Attorney General of the United States of America, by and through the undersigned, consents to the foregoing dismissal. The reason for the consent of the Attorney General is that the dismissal is pursuant to a settlement that is fair, adequate, and reasonable.

Respectfully submitted,

DATED: \_\_\_\_\_, 2012

ANDRÉ BIROTTE JR.  
United States Attorney  
LEON W. WEIDMAN  
Chief, Civil Division  
WENDY L. WEISS  
Chief, Civil Fraud Section  
SUSAN R. HERSHMAN  
Deputy Chief, Civil Fraud Section

\_\_\_\_\_  
JOHN E. LEE  
Assistant United States Attorney

Attorneys for the  
UNITED STATES OF AMERICA

CONSENT OF THE ATTORNEY GENERAL

OF THE STATE OF CALIFORNIA

Pursuant to California Government Code § 12652(c)(1), the Attorney General of the State of California, by and through the undersigned, consents to the foregoing dismissal. The reason for the consent of the Attorney General is that the dismissal is pursuant to a settlement that is fair, adequate, and reasonable.

Respectfully submitted,

DATED: \_\_\_\_\_, 2012

KAMALA D. HARRIS  
Attorney General of California  
BRIAN V. FRANKEL  
Supervising Deputy Attorney General

\_\_\_\_\_  
LORA FOX MARTIN  
Deputy Attorney General

Attorneys for the  
STATE OF CALIFORNIA

**IT IS SO ORDERED,**

This \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE