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U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

By _____

UNITED STATES OF AMERICA,
ex rel. BEN SEWELL,

Plaintiffs,

vs.

CIVIL ACTION NO. SA-94-CA-109-OG

CAROLINE HAGGARD, a/k/a CAROLINE
FLORES, a/k/a CAROLINE GARDENER,
Individually and d/b/a/
COMMUNICARE HEALTH CARE AGENCY,
INC. f/k/a HEALTH AMERICA HOMECARE
S.A., INC.; COMMUNICARE ENTERPRISES
LIMITED; PREMIUM HEALTHCARE, INC.;
C. HAGGARD ENTERPRISES, INC.;
COMMUNICARE PHARMACY, INC.,
BROADWAY HOME HEALTH AGENCY, INC.,
a/k/a BROADWAY HOME HEALTH, INC.;
5707 I-10 LIMITED; JEREMIAH S.A., LLP;
DEVINE COMMUNITY HOME HEALTH
AGENCY, INC.; HOME HEALTH IDEAS, INC;
LOCKHARDT HOME HEALTH AGENCY,
INC.; PERFORMANCE MANAGEMENT
GROUP, INC.; MANAGEMENT &
CONSULTING PERFORMANCE GROUP, INC.;
C. 3M. S. LEASING CO., LIMITED
a/k/a 3CMS LEASING CO.; HHA, INC.;

SANTOS FLORES, M.D., a/k/a SANTOS
M. FLORES M.D., P.A., Individually
and S. M. FLORES MEDICAL CLINIC,
INC.,

MARLESE REEVES, and

BARBARA NANCE,

Defendants

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the UNITED STATES OF AMERICA, acting through the United States Attorney's Office for the Western District of Texas, and on behalf of the Office of the Inspector General, Department of Health and Human Services ("OIG-HHS") and SANTOS FLORES, M.D., a/k/a SANTOS M. FLORES M.D., P.A., Individually and S. M. FLORES MEDICAL CLINIC, INC., ("SANTOS FLORES") by and through his attorneys Goldstein, Goldstein and Hilley.

II. RECITAL

A. Defendant SANTOS FLORES, M.D., a/k/a SANTOS M. FLORES M.D., P.A., Individually and as S. M. FLORES MEDICAL CLINIC, INC., was engaged in the business of providing medical care to patients.

B. A civil lawsuit, United States ex rel Ben Sewell v. Caroline Haggard, et al, Civil Action No. SA-94-CA-0109, was filed under seal in the Western District of Texas on February 14, 1994, and the Government formally intervened in the lawsuit and filed an Amended Complaint on February 14, 1997. Thereafter, on February 25, 1998, a Second Amended Complaint was filed. On January 28, 1999, the government made a motion to file a Third Amended Complaint and a motion for Partial Summary Judgment.

C. The United States contends that SANTOS FLORES submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997).

D. The United States contends that it has certain civil claims against SANTOS FLORES under the False Claims Act, 31 U.S.C. sections 3729, et seq., common law and equitable doctrines for engaging in conduct during the period from July 1, 1992 to June 30, 1994 as follows: SANTOS FLORES violated the federal physician self-referral prohibition, 42 U.S.C. section 1395nn and 42 C.F.R. 242.22, by participating in a scheme to circumvent these statutes and regulations which prohibit the referral of patients to a home health agency where a physician has a significant ownership interest. FLORES employed a physician to treat his patients and allowed his patients to be treated by an entity in which he had a significant ownership interest by permitting the physician to authorize home health care to that entity. FLORES further allowed his patients to be routinely screened by his employees who were supervised by an entity where he had a significant ownership interest so that those who seem to require home health services were segregated out and that Plans of Treatment were then prepared and submitted for signature by other physicians who were not the patients' treating or regular physician (hereinafter referred to as the "Covered Conduct").

E. The United States also contends that it has actions against certain corporate entities in which SANTOS FLORES may have a legal or equitable interest and in which SANTOS FLORES may be a party to the actions.

F. The United States also contends that it has certain administrative claims against SANTOS FLORES under the provisions for permissive exclusion from Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

G. SANTOS FLORES contends that he did not present or caused to be presented any false and/or fraudulent claims for payment to Medicare. SANTOS FLORES contends that he did not commit any of the acts alleged in Paragraph IIC, D, or E, nor did he present or cause to be presented any false and/or fraudulent claims for payment to Medicare.

H. The parties desire to reach an agreement, to settle and compromise the above-captioned cause as it pertains to Defendant SANTOS FLORES, and resolve any and all issues and disputes between them without any admission of liability and in order to avoid the delay, uncertainty and expense of litigation.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. SANTOS FLORES shall execute an Agreed Judgment in favor of the UNITED STATES in the sum of ONE MILLION SEVEN HUNDRED NINETEEN THOUSAND NINE HUNDRED EIGHTY-EIGHT DOLLARS (\$1,719,988) plus interest at the post judgment interest rate.
2. Upon execution of this Agreement, SANTOS FLORES agrees to pay the sum of \$210,000 in five (5) years at \$3,500 per month. The first installment payment shall be made to the Financial Litigation Unit of the United States Attorney's Office, Western District of Texas, 601 N.W. Loop 410, Suite 600, San Antonio, Texas 78216 on the execution of this settlement, and thereafter, on 30th day of the next month and each subsequent month until the full amount of

\$210,000 is paid. SANTOS FLORES may, at his option, prepay any installment to the Financial Litigation Unit without penalty. Interest shall accrue on late payments at the post judgment rate.

3. SANTOS FLORES agrees to the immediate appointment of a Receiver to liquidate all real property wherever situated in which he has a legal or equitable interest. SANTOS FLORES agrees that he will cooperate with the Receiver and the United States required to effect this liquidation. Upon liquidation the Receiver shall deposit the net proceeds (gross proceeds minus his commission and expenses) to the Financial Litigation Unit of the United States Attorney's Office, Western District of Texas, 601 N.W. Loop 410, Suite 600, San Antonio, Texas 78216. One-half of said net proceeds shall be applied towards the settlement sum of \$1,719,988 as set forth in Paragraph III.1 as benefit for the amount owed by SANTOS FLORES, and the remaining shall be deposited with the Financial Litigation Unit to satisfy the Court's restitution order against Caroline Haggard Flores, his wife, in SA-96-CR-108 (W.D.TX.).

4. Plaintiff UNITED STATES accepts the sum set forth in Paragraph III.1 above and paid in accordance with Paragraph III.2 and III.3 above as compensation and in full settlement and satisfaction of any civil or administrative monetary claim the United States has or may have 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, breach of contract and fraud against SANTOS FLORES which are based on his alleged Covered Conduct as set forth in Paragraph II.D, that caused the presentation of false and/or fraudulent claims for home health care services to Medicare and payment thereof, during the period from about July 1, 1992 until June 30, 1994. Full performance

of Paragraph III.2 and III.3 are conditions precedent to the release of claims which the United States has against SANTOS FLORES. The release of claims in this paragraph is subject to the provisions of Paragraphs III.8 and III.19, below.

5. Subject to the exceptions in Paragraph III.8 below, in consideration of the obligations of SANTOS FLORES set forth in this Agreement, conditioned upon SANTOS FLORES' discharge of the payment obligations as set forth in Paragraphs III.2 and III.3 of this Agreement and subject to Paragraph III. 19, below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release SANTOS FLORES from any civil or administrative monetary claim the United States has or may have 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, breach of contract and fraud, for the Covered Conduct as set forth in Paragraph II.D.

6. In consideration of the obligations of SANTOS FLORES set forth in this Agreement, conditioned upon SANTOS FLORES' discharge of the payment obligations as set forth in Paragraph III.2 and III.3 of this Agreement and subject to Paragraph III.19, below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against SANTOS FLORES under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph III.8 below, and as reserved in this paragraph. Nothing

in this paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph III.8 below.

7. SANTOS FLORES has entered into a Corporate Integrity Agreement with OIG-HHS, attached as Exhibit 1, which is incorporated into this Agreement by reference. Upon execution of this Agreement, SANTOS FLORES' obligations under the Corporate Integrity Agreement becomes immediately effective.

8. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person including SANTOS FLORES are any and all of the following:

- (i) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (ii) Any criminal liability;
- (iii) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs, pursuant to 42 U.S.C. § 1320a-7(a);
- (iv) Any express or implied warranty claims or other claims for defective or deficient product or services, including quality of goods or services provided by SANTOS FLORES;
- (v) Any claims based upon such obligations as are created by this Agreement;
- (vi) Any claims based on a failure to deliver items or services due;
- (vii) Any claims against any individuals, including officers and employees.

9. SANTOS FLORES has provided sworn financial disclosure statements ("Financial Statements") and a deposition giving information concerning all his assets wherever situated to the United States and the United States has relied on the accuracy and completeness of those Financial

Statements and the information provided by deposition in reaching this Agreement. SANTOS FLORES warrants that the Financial Statements and the information provided in his deposition are thorough, accurate, and complete. SANTOS FLORES further warrants that he does not own or have an interest in any assets which have not been disclosed in the Financial Statements and deposition, and that he has made no misrepresentations on, or in connection with, the Financial Statements and deposition. In the event the United States learns of asset(s) in which SANTOS FLORES had an interest at the time of this Agreement which were not disclosed in the Financial Statements or deposition, or in the event the United States learns of a misrepresentation by him on, or in connection with, the Financial Statements or deposition, and in the event such nondisclosure or misrepresentation changes the estimated net worth of SANTOS FLORES set forth on the Financial Statements and deposition by TEN THOUSAND DOLLARS (\$10,000) or more, the United States may at its option: (1) rescind this Agreement and reinstate its suit upon the underlying claims described in Paragraph II.B, C & D; or (2) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of SANTOS FLORES previously undisclosed assets. SANTOS FLORES agrees not to contest any action undertaken by the United States pursuant to this provision.

10. In the event that the United States, pursuant to paragraph 9 above, opts to rescind this Agreement, SANTOS FLORES expressly agrees not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (1) are filed by the United States within sixty (60) calendar days of written notification to SANTOS FLORES that this Agreement has been rescinded, and (2) relate to the Covered Conduct, except to the extent these defenses were available on February 14, 1997.

11. SANTOS FLORES waives and will not assert any defenses he may have to any criminal prosecution or administrative action relating to the conduct as set forth in Paragraph II.C, which defenses may be based in whole or in part on the Double Jeopardy or Excessive Fines Clause of the Constitution or the holding or principles set forth in *United States v. Halper*, 490 U.S. 435 (1989), *Austin v. United States*, 509 U.S. 602 (1993), *Hudson v. United States*, ___ U.S. ___, 118 S.Ct. 488 (1997) and *United States v. Bajakajian*, ___ U.S. ___, 118 S.Ct. 2028 (1998), and agrees that the Settlement Amount is not punitive in nature or effect for purposes of such criminal prosecution or administrative action. Nothing in this paragraph or any other 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. The amount that SANTOS FLORES must pay pursuant to this Agreement pursuant to Paragraph III.1 above, will 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 payor, related to the Covered Conduct; and SANTOS FLORES agrees not to resubmit to any Medicare carrier or intermediary or any State payor any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denial of claims.

13. SANTOS FLORES agrees that all costs as defined in the Federal Acquisition Regulation ("FAR") section 31.205-47 and Title XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997) and 1396-1396v (1997), and the regulations promulgated thereunder, incurred by or on behalf of SANTOS FLORES in connection with: (1) the matters covered by this Agreement, (2) the Government's audits and civil and any criminal investigations of the matters covered by this Agreement, (3) SANTOS FLORES' investigation, defense, and

corrective actions undertaken in response to the Government's audits and civil and any criminal investigations in connection with the matters covered by this Agreement, and Corporate Integrity Agreement, (4) the negotiation of this Agreement and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employee Health Benefits Program (FEHBP) (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by SANTOS FLORES and SANTOS FLORES will 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 SANTOS FLORES or any of his business organizations to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

14. SANTOS FLORES further agrees that within 60 days of the effective date of this Agreement he will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in Paragraph 13) 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 SANTOS FLORES or any of his business organizations, and will 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. SANTOS FLORES agrees that the United States will be entitled to recoup from SANTOS FLORES any overpayment 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 United States Attorney's Office, Western District of Texas, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by SANTOS FLORES or any of his business organizations on the effect of inclusion of unallowable costs (as defined in Paragraph 13) SANTOS FLORES or any of his business organizations' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this paragraph.

15. SANTOS FLORES covenants to cooperate fully and truthfully with the United States' investigation of individuals and entities not specifically released in this Agreement, for the conduct as set forth in Paragraph II.D. Upon reasonable notice, SANTOS FLORES will make reasonable efforts to facilitate access to, and encourage the cooperation of directors, officers, and employees of any of his business organizations for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United States, upon reasonable request, all non-privileged documents and records in his possession, custody or control relating to the Covered Conduct.

16. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

17. SANTOS FLORES agrees that he will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. SANTOS FLORES waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

18. SANTOS FLORES expressly warrants that he has reviewed his financial situation and that he currently is solvent within the meaning of 11 U.S.C. Section 547(b)(3), and will remain solvent following his payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to SANTOS FLORES within the meaning of 11 U.S.C. Section 547(c)(1), and (2) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

19. In the event SANTOS FLORES commences, or a thirty party commences, within 91 days of the effective date of this Agreement, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of SANTOS FLORES' debts, or seeking to adjudicate SANTOS FLORES as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for SANTOS FLORES or for all or any substantial part of SANTOS FLORES' assets, SANTOS FLORES agrees as follows:

a. SANTOS FLORES' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. Section 547, and SANTOS FLORES will not argue or otherwise take the position in any such case, proceeding or action that: (i) SANTOS FLORES' obligations under this Agreement may be avoided under 11 U.S.C. Section 547; (ii) SANTOS FLORES was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to SANTOS FLORES.

b. In the event that SANTOS FLORES' obligations hereunder are avoided pursuant to 11 U.S.C. Section 547, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against SANTOS FLORES for the claims that would otherwise be covered by the releases provided in Paragraphs III.5 and 6, above. If the United States chooses to do so, SANTOS FLORES agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude SANTOS FLORES from participation in Medicare, Medicaid, or other federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph, and that SANTOS FLORES will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) that SANTOS FLORES will 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 claims, actions or proceeding which are brought by the United States within thirty (30) calendar days of written notification to SANTOS FLORES that the releases herein have been rescinded pursuant to this paragraph, except to the extent such defenses were available on February 14, 1997; and (iii) the United States has a valid claim against SANTOS FLORES in the amount of SIX MILLION SIX HUNDRED SEVENTY-THREE THOUSAND TWO HUNDRED NINETY-TWO DOLLARS (\$6,673,292.00) and the United States may pursue its claim, *inter alia*, in the case, action or proceeding referenced in the first clause of this paragraph, as well as in other case, action, or proceeding.

c. SANTOS FLORES acknowledges that his agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

20. Each party covenants, acknowledges, warrants, and represents the following, recognizing each party's reliance on the same:

- (a) It is executing this Agreement based upon its own judgment;
- (b) It has had ample opportunity to consider the consequences of this Agreement and to consult with any and all persons of its choosing regarding the same;
- (c) It does not enter this Agreement based upon any promise, act, inducement, statement, agreement, omission, or representation of any of the parties not herein contained; and
- (d) It has all requisite authority and capacity to execute and consummate this Agreement.

21. All settlement costs shall be paid by the party incurring same. Each party is to bear its own costs.

22. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Western District of Texas, except that any disputes arising out of the Corporate Integrity Agreement shall be resolved in the manner set forth in the Corporate Integrity Agreement.

23. This Agreement and the Corporate Integrity Agreement incorporated herein as Exhibit A constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties except that only SANTOS FLORES and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement, pursuant to Paragraph XI(3) of the Corporate Integrity Agreement.

24. SANTOS FLORES executes this Agreement on behalf of himself. The undersigned attorney warrants that he is authorized by SANTOS FLORES to execute this document in that

capacity. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

26. This Agreement is effective on the date of signature of the last signatory to the Agreement.

27. SANTOS FLORES hereby consents to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

JAMES WILLIAM BLAGG
United States Attorney

DATED: 3/5/99

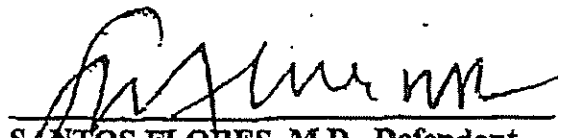
By: Winstanley F. Luke
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DATED: 3/12/99

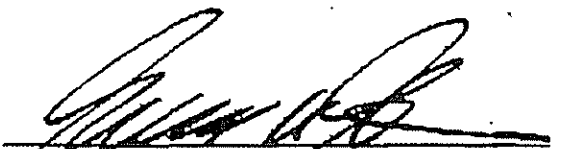
Lewis Morris
LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

DATED: 3/4/99



SANTOS FLORES, M.D., Defendant
SANTOS M. FLORES, M.D., P.A.
and S. M. FLORES MEDICAL CLINIC,
INC.

DATED: 3/4/99



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