

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

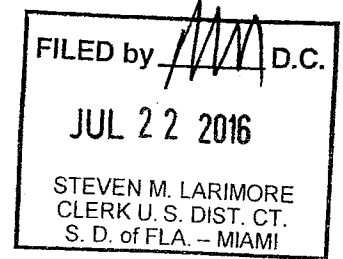
CASE NO. 16-20549

UNITED STATES OF AMERICA

vs.

PHILIP ESFORMES,

Defendant.



**GOVERNMENT'S MOTION FOR PRE-TRIAL  
DETENTION AND SUPPORTING MEMORANDUM**

The United States of America, by and through its undersigned attorneys, respectively moves the Court pursuant to the Bail Reform Act to detain Defendant Philip Esformes ("Defendant") pending trial. For more than a decade, Defendant masterminded and executed sophisticated health care fraud and money laundering conspiracies through a network of skilled nursing facilities and assisted living facilities that he owned or operated (the "Esformes Network"). Defendant and his co-conspirators not only caused Esformes Network facilities to submit false and fraudulent bills to Medicare and Medicaid, they also sold access the Medicare and Medicaid beneficiaries who resided in these facilities, soliciting and extracting kickbacks from pharmacies, home health agencies, and other providers that then illegally billed these government-sponsored programs for services purportedly provided to Esformes Network beneficiaries. Defendant and his co-conspirators used elaborate means to hide their illicit transactions, disguising kickbacks as (among other things) payments to escorts, charitable donations, and a basketball coach to provide private instruction to Defendant's son.

From 2009 through 2016 alone, this conspiracy resulted in the submission of approximately \$1 billion in false and fraudulent claims to Medicare and Medicaid, including

approximately \$221 million paid by Medicare just to the Esformes Network skilled nursing facilities in Miami-Dade County. Defendant also amassed significant personal wealth – self reported as \$78 million in August 2014 – and, due to the enormous loss from his criminal activities, he faces a potential term of life imprisonment under the Sentencing Guidelines. Defendant, moreover, has already demonstrated that he would consider fleeing in the face of criminal charges: cooperating witnesses and recorded conversations establish that he previously attempted to fund the flight of a defendant charged in a separate case. As such, the Government respectfully submits that no condition or combination of conditions of release will reasonably assure the appearance of Defendant and the safety of other persons and the community. *See* 18 U.S.C. § 3142(e)(1).

## **I. BACKGROUND**

### **A. Indictment and Charges**

On July 21, 2016, a grand jury sitting in the Southern District of Florida returned a 28-count indictment charging Defendant, as well as co-defendants Odette Barcha and Arnaldo Carmouze, with numerous offenses stemming from an expansive and long-running health care fraud and money laundering scheme. (Dkt. No. 1.) Specifically, Defendant is charged with one count of conspiracy to commit health care fraud and wire fraud, in violation of 18 U.S.C. § 1349; two counts of health care fraud, in violation of 18 U.S.C. § 1347; one count of conspiracy to defraud the United States and to pay and receive health care kickbacks, in violation of 18 U.S.C. § 371; two counts of receipt of kickbacks in connection with a federal health care program, in violation of 42 U.S.C. § 1320a-7b(b)(1)(A); six counts of payment of kickbacks in connection with a federal health care program, in violation of 42 U.S.C. § 1320a-7b(b)(2)(A); one count of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h); seven counts of

money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i); and two counts of obstruction of justice, in violation of 18 U.S.C. § 1503. The Indictment also seeks forfeiture of various assets pursuant to 18 U.S.C. § 982.

**B. The Medicare Program & the Esformes Network<sup>1</sup>**

For more than 14 years, Defendant operated the Esformes Network to enrich himself through false and fraudulent billings to Medicare and Medicaid for thousands of beneficiaries residing in Esformes Network facilities (the “Esformes Network beneficiaries”). The Esformes Network is comprised of approximately twenty residential facilities across South Florida, including both skilled nursing facilities (“SNFs”) and assisted living facilities (“ALFs”). Notably, Medicare coverage for the services offered by these types of facilities differs significantly.

Medicare Part A covers a beneficiary’s stay in a SNF where a physician (or other qualified licensed provider) has certified that, among other things, the beneficiary requires daily skilled nursing or skilled rehabilitation services in an inpatient setting. But to qualify for the SNF benefit, the beneficiary must have an inpatient hospital stay of at least three consecutive days within 30 days of the admission to the SNF. And, because SNF services are intended to be short term, Medicare pays for only 100 days of skilled nursing care after each three-day hospital stay. A beneficiary who is discharged from the SNF at the end of the 100-day period can become eligible for another 100-day SNF benefit period only if (a) she spends 60-days outside the SNF and (b) is admitted to the hospital for another three-day qualifying inpatient stay.

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<sup>1</sup> For purposes of this motion, the Government proffers the facts contained herein. The Government is prepared to offer testimony at a hearing at the Court’s discretion. *See United States v. Gaviria*, 828 F.2d 667, 669 (11th Cir. 1987).

Medicare offers no comparable benefit for ALFs, which are state-licensed facilities that provide housing, meals, personal care services, and supportive services to older persons and disabled adults who require assistance with activities of daily living. ALFs are intended to be an alternative to more restrictive, institutional settings (such as hospitals) for individuals who do not need 24-hour nursing supervision, physical therapy, or skilled care. Medicare does not pay for any services provided by an ALF; rather, patients pay out of pocket or, on some occasions, Medicaid covers services. Physicians, however, may enter an ALF, visit a beneficiary residing there, and then bill Medicare Part B for an office visit. Similarly, other providers may bill Medicare for services provided to beneficiaries residing in ALFs. For example, pharmacies may submit claims under Medicare Part D for medications and home health agencies may submit claims under Medicare Part A for services provided to beneficiaries in ALFs.

### **C. The Fraudulent Scheme**

Defendant engaged in a long-running fraudulent scheme involving a complex array of corrupt relationships between the Esformes Network and various physicians, hospitals, and other health care providers who paid for access to thousands of Medicare and Medicaid beneficiaries under Defendant's control. Analysis of Medicare claims data revealed that there are more than 14,000 beneficiaries in the Esformes Network, having resided in an ALF or SNF owned or controlled by Defendant, during the conspiracy period. Through his control of the Esformes Network, Defendant and his co-conspirators cycled Medicare and Medicaid beneficiaries through SNFs, hospitals, and ALFs and – without regard to the beneficiaries' medical needs – to maximize Defendant's financial benefit. And Defendant, by retaining tight control over access to the Esformes Network, ensured that these beneficiaries received services not from providers who the beneficiaries chose, but from any provider willing to pay Defendant kickbacks.

Defendants' fraudulent scheme had two primary aspects, designed to allow Defendant to profit both through direct billing to Medicare and Medicaid and from kickbacks paid by other subscribers for access to the Esformes Network beneficiaries. *First*, by controlling access to Esformes Network beneficiaries and paying kickbacks to physicians and physician assistants ("PAs"), Defendant maintained a pipeline of beneficiaries into Esformes Network SNFs, allowing the SNFs to bill Medicare for Defendant's financial benefit. In particular, because Medicare would cover SNF services only after a three-day hospitalization and after a doctor certifies the medical need for the services, Defendant and his co-conspirators paid kickbacks to physicians and PAs to induce them to admit beneficiaries to the hospital and to refer beneficiaries for skilled nursing or rehabilitation services they were not medically necessary. Through this scheme, after a beneficiary spent three days in the hospital, the beneficiary would not go to a SNF of his or her choice, but instead the physician or PA would refer the beneficiary to a SNF within the Esformes Network. At or around the end of the 100-day benefit period, the beneficiary would be discharged and moved to an Esformes Network ALF. After the required 60-day waiting period between consecutive admissions to an SNF, a physician or physician assistant would readmit the beneficiary to the hospital, re-initiating the cycle.

*Second*, Defendant monetized Esformes Network beneficiaries in ALFs – which could not bill Medicare directly – by providing access to Esformes Network beneficiaries to any health care provider willing to pay a kickback. Defendants' co-conspirators, particularly his "lieutenants" Guillermo and Gabriel Delgado (collectively the "Delgado Brothers"), entered into kickback arrangements with a number of Medicare providers, including pharmacies, home health agencies, partial hospitalization programs, laboratories, and diagnostic companies (the "Kickback Providers"). Physicians and PAs to whom Defendant paid kickbacks referred

Esformes Network beneficiaries to the Kickback Providers, which, in turn, billed Medicare for services purportedly provided to the beneficiaries. Many of these services, however, were not medically necessary or were never provided. The Delgado Brothers paid Defendant half of the proceeds from the arrangements with the Kickback Providers.

By relying on intermediaries to arrange kickbacks with physicians and Kickback Providers, Defendant attempted to conceal his illegal conduct and to distance himself from the fraudulent scheme, while reaping the financial rewards. Defendant, for example, funneled payments to physicians and PAs through co-defendant Barcha and the Delgado Brothers. In order to provide money to the Delgado Brothers to fund kickbacks to physicians, Defendant caused Esformes Network SNFs to pay inflated invoices for durable medical equipment (“DME”) sold to the SNFs by Diversified Medical Group, a DME company controlled by the Delgado Brothers. In addition, Defendant disguised kickbacks to physicians as paychecks for sham medical director jobs and the ability to bill Medicare under the physicians’ provider numbers for services purportedly rendered to Esformes Network beneficiaries.

At the direction of Defendant, the Delgado Brothers entered into kickback arrangements with the Kickback Providers – often disguised as sham “consulting” agreements between the provider and a shell company owned by the Delgado Brothers. The Delgado Brothers passed half of these kickbacks to Defendant in forms designed to conceal their true purpose, including (1) cash payments; (2) payments for escorts; (3) travel expenses; (4); payments for services, such as a basketball coach to provide private instruction to Defendant’s son; and (5) donations to charities selected by Defendant, including one controlled by Defendant’s father.

Due to the expansive and long-running nature of the conspiracy orchestrated by Defendant, the loss to Medicare and Medicaid was extreme. Sophisticated analysis of available

claims data shows that, between 2009 and 2016, providers that participated in the fraud – including Esformes Network SNFs, hospitals, physicians, and Kickback Providers – submitted approximately \$1 billion for Esformes Network beneficiaries purchased through kickbacks. Of this, over \$450 million was billed by Esformes Network SNFs alone. Furthermore, during these years, Medicare actually deposited more than \$221 million into accounts of the Esformes Network SNFs located in Miami-Dade County.<sup>2</sup>

#### **D. Obstruction of Justice**

In addition to conspiracy and substantive charges arising from Defendant’s orchestration of this fraudulent scheme, Defendant has been charged with two counts of obstruction of justice based on his prior efforts to impede a health care fraud prosecution against the Delgado Brothers. After the Delgado Brothers’ arrests, Defendant repeatedly discussed funding Guillermo Delgado’s flight from the United States to Israel to avoid trial. During these conversations, Defendant explained in granular detail his plan to inflate renovation costs at Esformes Network SNFs to obtain Department of Housing and Urban Development (“HUD”) loans, which he could then divert to Guillermo Delgado. Attempting to carry out this plan, Defendant wrote checks to Guillermo Delgado to fund his flight from prosecution, and he encouraged Gabriel Delgado to “blame the empty chair” that that would be created by Guillermo’s flight to secure Gabriel’s acquittal at trial.

Recordings also capture conversations in which Defendant demanded that the Delgado Brothers sign affidavits falsely stating that Defendant played no role in the conduct that resulted in their indictment, refusing to provide Guillermo Delgado with money to flee the country until the Delgado Brothers signed these false affidavits. In reality, Defendant was the mastermind of

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<sup>2</sup> These figures are based on available data from 2009 to 2016, and excludes claims submitted during other years in the conspiracy period and claims submitted to Medicaid. Therefore, the ultimate loss figure may be far larger.

the health care fraud, kickback, and money laundering conspiracies centered on the Esformes Network, and he relied on the Delgado Brothers to execute them.

## **II. ARGUMENT**

The Bail Reform Act empowers the Court to detain a defendant pending trial upon a finding that the defendant is either a danger to the community or a risk of flight. *See* 18 U.S.C. § 3142(e)(1) (pretrial detention authorized where “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community”); *see also United States v. Rodriguez*, 897 F. Supp. 1461, 1463 (S.D. Fla. 1995) (“Proof of both flight risk and danger to the community is unnecessary.”). A finding that a defendant represents a danger to the community must be supported by clear and convincing evidence, while a finding of risk of flight need only be supported by a preponderance of the evidence. *See* 18 U.S.C. § 3142(f); *United States v. Quartermaine*, 913 F.2d 910, 917 (11th Cir. 1990); *United States v. King*, 849 F.2d 485, 489 (11th Cir. 1988).

In determining whether detention pending trial is appropriate, the Court must consider the following factors: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person’s release. 18 U.S.C. § 3142(g). Here, these factors indicate that Defendant has the means and incentive to flee the jurisdiction and is prepared to do so.

### **A. The Nature and Circumstances of the Offenses Charged**

The sophisticated nature of Defendant’s charged crimes, his past efforts to conceal the fraudulent scheme, and his exposure to a lengthy term of imprisonment demonstrate that he poses a substantial flight risk. As explained in detail above, Defendant played a leadership role



in a wide-ranging and complex conspiracy involving more than twenty Esformes Network facilities, at least two hospitals, and numerous other health care providers, which billed Medicare for services purportedly provided to over 14,000 beneficiaries during the 14-year conspiracy period. Through a multifaceted fraudulent scheme, Defendant enriched himself not only through the direct submission of false and fraudulent Medicare claims by facilities he controlled, but also by extracting kickbacks from other providers, which submitted false and fraudulent claims under Medicare Parts A, B, and D. As a result of Defendant's participation in this fraudulent scheme, the Indictment charges that Defendant conspired to commit health care fraud and wire fraud, conspired to defraud the United States and to pay and receive health care kickbacks, and conspired to launder money. Defendant is also charged with substantive counts of health care fraud, paying and receiving kickbacks and money laundering in connection with kickbacks paid and received through this scheme. The serious crimes charged in the Indictment weigh in favor of detention.

Furthermore, the charged offenses demonstrate that the Defendant possesses a sophisticated ability to deceive authorities and conceal fraud. The fraud pervading the Esformes Network depended on Defendant's creation of a network of co-conspirators to assist in organizing and disguising his fraudulent conduct. To hide his personal involvement in the fraud, Defendant used others, especially the Delgado Brothers and co-defendant Barcha, to negotiate, coordinate, and act as middlemen in kickback arrangements with physicians and other health care providers. Defendant, with his co-conspirators, also disguised these arrangements by using sham contracts or by paying kickbacks with cash or in the guise of payments for escorts, charitable donations, payments for services, and inflated purchases of DME.

In addition to the deception inherent in the fraudulent scheme, Defendant also attempted to impede the criminal process and has been charged with obstruction of justice. The “willingness to obstruct justice evinces a lack of respect for the rule of law and weighs heavily towards a finding that Defendant is a flight risk and a danger to the community.” *United States v. Burstyn*, No. 04-CR-60279-ALL, 2005 WL 2297605, at \*4 (S.D. Fla. Mar. 18, 2005) (unpublished). Accordingly, “obstruction of justice, an attack on the rule of law, is a traditional ground for pretrial detention.” *Id.* Moreover, Defendant’s attempt to fund and assist a co-conspirator’s flight to avoid a criminal trial leaves little doubt that he would consider fleeing the country in light of the serious charges he now faces. *See id.* (“That Defendant allegedly counseled two members of the Tobin criminal enterprise . . . to flee the country magnifies the Court’s concern that pre-trial detention may be warranted because no set of restrictions would reasonably ensure Defendant’s presence at trial.”).

Given the far-reaching nature of the charged conduct, Defendant’s role in the fraudulent scheme, and the more than \$1 billion in losses, Defendant faces a significant period of incarceration if convicted. Indeed, a preliminary Sentencing Guidelines Calculation reveals that he would likely be subject to a term of imprisonment for life under the Sentencing Guidelines. This potential punishment gives Defendant strong motivation to flee.

In sum, due to his lengthy prison exposure and history of sophisticated deception and concealment, Defendant poses a serious flight risk.

#### **B. The Weight of the Evidence**

The charges against Defendant are supported by substantial evidence. Cooperating witnesses confirm Defendant’s critical role in the fraudulent scheme, making clear that Defendant wielded control over access to the Esformes Network beneficiaries to enrich himself

and obtain kickbacks. As the witnesses explain, Defendant directed co-conspirators to send Esformes Network beneficiaries to particular facilities and providers based on the kickback arrangements he entered. In addition, the cooperating witnesses – which include numerous co-conspirators – describe Defendant’s payment and receipt of kickbacks and his use of sham agreements and intermediaries to facilitate kickbacks paid for Defendant’s ultimate benefit.

Law enforcement also recorded conversations that directly evidence Defendant’s participation in the fraudulent scheme and his obstruction of justice. Among other things, these recordings capture Defendant negotiating a sham medical director position to conceal kickbacks to a physician and discussing kickbacks paid to Defendant in the guise of payments for escorts. With respect to the obstruction of justice charge, the recordings reveal that Defendant’s attempt to fund Guillermo Delgado’s flight from the United States was a carefully considered and detailed plan. Defendant, for example, told Guillermo that he must flee to a country without an affiliation with America and instructed Guillermo that he could never return.

Extensive documentary evidence further corroborates the cooperating witnesses. Corporate and bank records reflect Defendant’s ownership and control of numerous SNFs and ALFs. In an October 2013 financial statement that Defendant submitted to a bank, for example, he listed himself as the owner of more than 20 SNFs and ALFs, which he claimed had a fair market value totaling over \$27 million. Bank records also show kickback payments made as part of the fraudulent scheme. These records include checks from Defendant’s SNFs to Diversified Medical Group – the Delgado Brothers’ DME company used as a conduit for Defendant’s kickbacks – and checks from Diversified Medical Group to co-defendant Carmouze and other kickback recipients. And invoices from Diversified Medical Group provide additional evidence of its use as a pass-through for kickbacks from Defendant. These invoices corroborate

information from cooperating witnesses that, each month, Diversified Medical Group prepared an original invoice based on legitimate DME actually sold to Esformes Network facilities and later prepared an inflated invoice for the same month to cover kickbacks to be paid to physicians. Finally, Medicare claims data confirms that beneficiaries were cycled between Esformes Network facilities, hospitals, and other providers involved in the fraudulent scheme.

Accordingly, the strong evidence of Defendant's guilt weighs heavily in favor of pretrial detention.

### **C. The Defendant's History and Characteristics**

Defendant's tremendous financial resources, past travel practices, and long history of fraudulent conduct make it highly unlikely that any combination of conditions will reasonably assure his presence at future proceedings.

1. *Financial Resources.* Defendant's significant financial resources, including the millions of dollars in proceeds he derived from the fraud at Esformes Network facilities, make Defendant an especially high flight risk. In a personal financial statement dated August 31, 2014 that Defendant submitted to a bank, Defendant reported assets in excess of \$78 million, including more than \$3.5 million in cash on hand and in banks and \$12 million in real estate. *See* Attachment A (Personal Financial Statement of Philip Esformes). Defendant would likely be able to liquidate a significant portion of these assets: he reported no liabilities on the statement, and none of the real estate he reported owning was encumbered by mortgages or liens.

Defendant's self-reported worth likely represents only a limited portion of his true financial resources. Indeed, between 2009 and 2016, Medicare deposited approximately \$221 million into accounts for SNFs that Defendant controlled in Miami-Dade County alone. And many of Defendant's assets likely have not yet been located by law enforcement. The

Government has subpoenaed bank records from approximately 47 financial institutions in this investigation, and, to date, has identified approximately 200 accounts affiliated with Defendant across 28 institutions. The Government's analysis of these records is ongoing, but, based on the analysis available at this time, approximately 100 of these accounts contained amounts totaling over \$10 million as of the most recent date for which the government has records.<sup>3</sup> Moreover, although the government is seeking a protective order as to certain accounts under 18 U.S.C. § 1345, the substantial complexity of Defendant's finances and the sophisticated steps that he took to conceal the kickbacks he received frustrate the Government's efforts to identify and preserve Defendant's assets. In short, Defendant has ample financial means to flee.

Financial analysis to date has revealed that Esformes is significantly funded by his fraudulent Medicare business. Our analysis has revealed that monies traced directly to Medicare accounts have allowed Esformes to withdraw cash of over \$4.8 million, lease private jets in the amount of \$2.1 million, lease luxury vehicles in the amount of \$2.4 million, purchase watches in the amount of \$360,000 and \$600,000, respectively, and paid over \$8.9 million in credit card bills.

2. *Travel Practices.* While Defendant has limited past international trips – including St. Maarten – he has commonly traveled by private jet in prior travel. Unlike commercial air travel, the Government does not receive comparable notice regarding private jet passengers, and would likely be unable to prevent Defendant from leaving the country on a private jet. Defendant's travel practices therefore present a serious risk that he could successfully flee.

3. *History of Criminal and Fraudulent Conduct.* Defendant is charged with engaging in massive health care fraud, kickbacks, and money laundering schemes from

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<sup>3</sup> Although the Government does not presently have access to current balance information for the vast majority of these accounts, as of July 19-22, 2016, just nine of these accounts had balances totaling over \$1.3 million.

approximately 2002 through 2016. Thus, while it is technically true that the Defendant has no criminal record, the grand jury found probable cause that Defendant engaged in continuing criminal conduct for more than 14 years.

Moreover, although the Defendant avoided criminal punishment during this period, he faced civil penalties for defrauding Medicare and Medicaid, yet continued to engage in the same fraudulent conduct. *See United States v. LeClercq*, No. 07-80050-CR, 2007 WL 4365601, at \*4 (S.D. Fla. Dec. 13, 2007) (unpublished) (considering finding of the defendant's civil liability for fraud in determining that she posed a flight risk). In 2006, Defendant settled a civil action by the United States alleging that Defendant paid kickbacks to induce the admission of Medicare and Medicaid beneficiaries to a Miami-based hospital for medically unnecessary treatment and services. *See Settlement Agreement Binder, United States v. Michel* ("Civil Action"), No. 04-21579-CIV-JORDAN/TORRES (S.D. Fla.), annexed hereto as Attachment B. Defendant and his co-defendants in the Civil Action agreed to pay \$15.4 million to resolve this suit. *Id.* Even after paying a multi-million dollar settlement, Defendant's fraudulent conduct – including the payment of kickbacks for medically unnecessary admissions to a hospital referenced in the Civil Action – continued unabated. And Health and Human Services office of Inspector General put in place a monitor over the hospital named in the Civil Action to prevent the recurrence of the conduct, Defendant and his co-conspirators put in place more sophisticated arrangements to evade detection. Far from halting his illegal activities, Defendant reacted to this settlement by employing others as intermediaries in kickbacks with physicians in order to conceal his involvement, while Defendant continued to reap the benefits of the fraud. As Defendant explained in a recorded conversation, "after [the Civil Action]," he "stay[ed] away from doctors"

and “push[ed] the girls to deal with that stuff.” Defendant’s blatant lack of respect for the law undermines any claim that he may be trusted to appear at future proceedings.<sup>4</sup>

**D. The Nature and Seriousness of Defendant’s Danger to the Community**

The Bail Reform Act directs the Court to consider also “the nature and seriousness of the danger to any person or the community that would be posed by the person’s release.” 18 U.S.C. § 3142(g)(4). As the Eleventh Circuit has recognized, “[t]he term ‘dangerousness,’ as used in the Bail Reform Act of 1984, has a much broader construction than might be commonly understood in everyday parlance.” *King*, 849 F.2d at 487 n.2. While “danger to any person” is intended to address physical danger to a particular individual, danger to the community “refers to the danger that the defendant might engage in criminal activity to the detriment of the community.” *Id.* Thus, “the concern about safety [is] given a broader construction than merely danger of harm involving physical violence.” *Id.*; see also *LeClerq*, 2007 WL 4365601, at \*4 & n.5 (unpublished).

As an initial matter, there is evidence that Defendant may present a physical danger to himself. In a recorded conversation, Defendant stated that, if arrested like Guillermo Delgado, he “would kill [him]self,” as he has “a great life insurance policy.”

Furthermore, Defendant poses a substantial danger to the community – both physical and economic. To carry out the fraudulent scheme, Defendant required thousands of beneficiaries to undergo medically unnecessary treatments. Medicare beneficiaries are entitled to receive services for which they qualify from licensed and professional health care providers. But that is not what happened in the Esformes Network. Instead, Defendant sold Esformes Network beneficiaries to any provider that would pay him kickbacks, and forced beneficiaries into

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<sup>4</sup> Nor can Defendant claim that strong family ties limit his risk of flight. Defendant is in the midst of a divorce proceeding, and, as the allegations of the Indictment demonstrate, even while married Defendant was receiving kickbacks in the form of payments for high-end escorts.

hospital and SNF admissions they did not need so that Defendant could bilk Medicare through fraudulent claims. Furthermore, Defendant and his co-conspirators preyed upon beneficiaries' addictions by providing them with narcotics so that the beneficiaries would remain in Esformes Network facilities, allowing the cycle of fraud could continue. Defendants' callous disregard for the vulnerable beneficiaries that his facilities were supposed to house and treat establishes that he will remain a physical threat to the community if released.

Defendant also poses an acute economic danger. Defendant and his co-conspirators took extraordinary measures to conceal the fraudulent scheme and to prevent discovery of Defendant's involvement. They went to great lengths to cloak kickback arrangements in the guise of legitimacy through sham contracts and falsified invoices. When his fraud was uncovered in a civil suit, Defendant merely heightened his deceptive practices, routing kickbacks through co-conspirators and accepting payments in forms such as cash, escorts, and basketball coaching. Similarly, Defendant did not cease his criminal conduct when his lieutenants were arrested, but tried to insulate himself from prosecution by obtaining false affidavits and funding a defendant's flight from justice. That Defendant continued to engage in the same illegal conduct even after paying a multimillion settlement and attempted to obstruct justice as his co-conspirators were arrested demonstrates that he is not likely to be deterred from future criminal conduct by the pending charges. *See United States v. Burke*, No. 13-20616-CR, 2013 WL 5194138, at \*1 (S.D. Fla. Sept. 17, 2013) (finding that where a defendant engaged in "methodical and repetitive efforts to defraud and evade detection," this "pattern of deception suggests that [he] would continue to pose a danger of further harm to the community if released"). Given the strong likelihood that Defendant would persist in his pattern of criminal activity to the detriment of the community, Defendant's detention is necessary to ensure that he



does not continue to use and endanger vulnerable Medicare beneficiaries in order to steal millions more from Medicare.

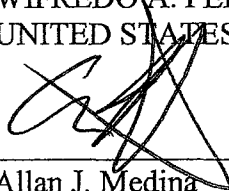
**CONCLUSION**

For the foregoing reasons, the United States respectfully requests that the Court detain Defendant pending trial.

Respectfully submitted,

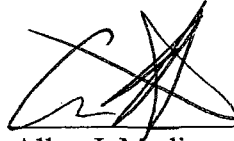
WIFREDO A. FERRER  
UNITED STATES ATTORNEY

By: \_\_\_\_\_

  
Allan J. Medina  
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Allan.medina@usdoj.gov

**CERTIFICATE OF SERVICE**

I hereby certify that, on July 22, 2016, I hand delivered and served this document with the Clerk's Office in the Southern District of Florida.

A handwritten signature in black ink, appearing to read 'Allan J. Medina', written over a horizontal line.

Allan J. Medina  
Trial Attorney  
United States Department of Justice  
Criminal Division, Fraud Section

# Attachment A

PERSONAL FIINANCIAL STATEMENTIndividual Information:

Name: Philip Esformes  
 Residence: 5077 N. Bay Road  
 City, State, Zip: Miami Beach, FL 33140  
 Occupation: Management  
 Business Name: Philip Esformes, Inc.  
 Business Address: 6865 N. Lincoln Ave.  
 City, State, Zip: Lincolnwood, IL 60712  
 Residence Phone: (305) 865-6561  
 Business Phone: (847) 674-5795

Other Party Information:

Name: Sherri Esformes  
 Residence: 5077 N. Bay Road  
 City, State, Zip: Miami Beach, FL 33140  
 Occupation: Management  
 Business Name: Philip Esformes, Inc.  
 Business Address: 6865 N. Lincoln Ave.  
 City, State, Zip: Lincolnwood, IL 60712  
 Residence Phone: (305) 865-6561  
 Business Phone: (847) 674-5795

STATEMENT OF FINANCIAL CONDITION AS OF AUGUST 31, 2014ASSETS

Cash on Hand and in Banks	\$ 3,576,261
U.S. Government & Marketable Securities	1,504,218
Non-Marketable Securities	
See Attached Schedule A	57,007,500
Restricted or Control Stock	900,000
Real Estate Owned	
See Attached Schedule B	12,275,000
Loans Receivable	1,762,750
Automobiles & other Personal Property	500,000
Cash Value of Life Insurance	235,369
Fully Vested Pension	<u>1,223,804</u>
<b>TOTAL ASSETS</b>	<b><u>\$78,984,902</u></b>

LIABILITIES AND NET WORTH

Total Liabilities	-0-
Total Net Worth	<u>78,984,902</u>
<b>TOTAL LIABILITIES AND NET WORTH</b>	<b><u>\$78,984,902</u></b>

1) All cash on hand & in banks and all government and marketable securities are held in the name of Sherri Esformes only.

SOURCES OF INCOME FOR THE YEAR 2012

Salary, Bonuses & commissions:	\$ 735,900
Dividends & Interest	1,601,565
Business Income	155,920
Real Estate & Partnership Income	<u>7,937,521</u>
Total Income	<u>\$ 10,430,906</u>

CONTINGENT LIABILITIES:

Do you have any contingent liabilities? No

PERSONAL INFORMATION:

Do you have a will? Yes

Are you a partner or officer in any other venture? Yes – See Attached

Are you obligated to pay alimony or child support? No

Are any assets pledged other than as described? No

Income Tax settled through: 12/31/12

Are you a defendant in any lawsuits or legal actions? No

Personal Bank accounts carried at: First Equity Bank  
Colonial Bank  
Brickyard Bank

Have you ever been declared a bankrupt? No

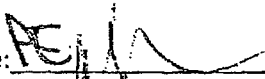
Are you a personal guarantor for any loans? Yes

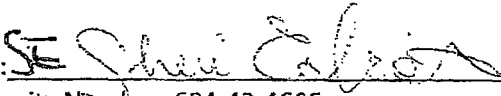
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The information contained in this statement is provided for the purpose of obtaining, or maintaining credit on behalf of the undersigned, or persons, firms, or corporations in whose behalf the undersigned may either severally or jointly with others, execute a guaranty. Each undersigned understands that the information provided herein (including the designation made as to ownership of property) is being relied upon in deciding to grant or continue credit. Each undersigned represents and warrants that the information provided is true and complete and that this statement may be considered as continuing to be true and correct until a written notice of a change is given by the undersigned.

Section 1014 of Title 18 of the United States Code was amended to make it a federal crime for any person to knowingly make any false statement or report, or willfully overvalue any land, property or security for the purpose of influencing in any way the action of any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

Dated Signed: September 1, 2014

Signature:  \_\_\_\_\_  
Social Security Number: 348-68-8718  
Date of Birth: 10/13/68

Signature:  \_\_\_\_\_  
Social Security Number: 604-42-4666  
Date of Birth: 7/11/71

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Philip & Sherri Esformes  
Personal Financial Statement  
As of August 31, 2014

Non Marketable Securities

<u>Percentage</u>	<u>Description</u>	<u>Value</u>
41.25%	ALF Holding	15,000
50%	Adirhu Associates LLC	25,000
90%	AinOde Milvado	4,900,000
50%	Ayintov LLC	800,000
15%	Bradford Terrace	2,350,000
85%	Canyon Tove	25,000
90%	Claremont, LLC	425,000
90%	6849 S. Clyde LLC	750,000
41.25%	Courtyard Manor	650,000
50%	D'Var Tove LLC	75,000
50%	Eden Gardens	750,000
99%	Esten, LLC	125,000
40%	Fairhaven Nursing Home	13,000,000
50%	Flamingo Park	400,000
24%	Fountainhead Manor	540,000
30%	Harmony Health Center	5,400,000
50%	Lakerswin, LLC	400,000
41.25%	Jene's Retirement Living	277,500
40%	Kabirhu Associates LLC	125,000
40%	M.E. Entertainment LLC	250,000
40%	MVP LLC	2,000,000
90%	7040 S. Merrill LLC	700,000
90%	6811 Notxap, LLC	200,000
30%	Oceanside Terrace	4,500,000
45%	Orange Park Nursing Home	3,000,000
80%	PEJT, LLC-Bennett	75,000
50%	La Hacienda Gardens	250,000
90%	6154-58 S. Richmond, LLC	300,000
90%	7337-43 S. Ridgeland LLC	350,000
3.1%	Ridgeway Associates	75,000
90%	6148-52 Sacramento, LLC	525,000
90%	6155-59 S. Sacramento, LLC	325,000
45%	Sefardic Associates	2,300,000
40%	Takifhu Associates LLC	125,000
20%	Terrace of Daytona Beach	1,250,000
90%	7919-25 S. Wood LLC	350,000
32%	Woodland Terrace	2,800,000
25%	Woodland Terrace - Citrus City	2,200,000
30%	Woodland Terrace - Alachua City	2,500,000
26%	Woodlands Terrace of Jacksonville	<u>1,900,000</u>
	Total Non-Marketable Securities	\$57,007,500

Footnotes:

- 1) All of the above entities are in the name of Philip Esformes
- 2) All values are based on Fair Market Value
- 3) A number of the above Nursing homes have multiple entities. A schedule is attached.

Philip & Sherri Esformes  
 Personal Financial Statement  
 As of August 31, 2014  
Schedule B – Real Estate Owned

Schedule B – Real Estate Owned

<u>Address &amp; Type of Property</u>	<u>Date Acquired</u>	<u>Cost</u>	<u>Market Value</u>
5077 N. Bay Road Miami Beach, FL Single Family Residence	2002	2,600,000	4,000,000
5069 N. Bay Road Miami Beach, FL Single Family Residence	2006	2,500,000	2,500,000
180 E. Pearson Unit 7201 Chicago, IL Condominium	2005	2,200,000	2,200,000
9427 Sawyer St. Los Angeles, CA Single Family Residence	2008	2,775,000	2,775,000
980 W. 48 <sup>th</sup> Street Miami Beach, FL	2012	800,000	800,000
Total			12,275,000

- 1) All of the above Real Estate is owned in the names of Philip & Sherri Esformes
- 2) There are no mortgages or liens existing on any of the above Real Estate



Philip & Sherri Esformes  
Personal Financial Statement  
As of August 31, 2014  
Schedule C – Cash on Hand

<u>Account Number</u>	<u>Account Name</u>	<u>Balance</u>
#102747	Sherri Esformes	\$ 154,920
#503456	Sherri Esformes – Tax Acct.	505,028
#505872	Sherri Esformes	115,399
#311901	Sherri Esformes	1,845,750
#414891	Sherri Esformes	230,541
#414913	Sherri Esformes	134,570
#419311	Sherri Esformes	301,766
#507858	Philip Esformes	37,404
#419362	Sherri Esformes – Rev Trust	<u>150,883</u>
	Total First Equity Accounts	3,476,261
	Other Accounts	<u>100,000</u>
	Total Cash All Accounts	<u>\$ 3,576,261</u>

## Attachment B

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (Agreement), effective as of the date of the last signatory (Effective Date), 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), and the State of Florida's Agency for Healthcare Administration (AHCA), acting through the Office of the Attorney General (FL AG) (collectively, the State of Florida); and Defendants Jack Jacobo Michel, M.D. (Jack Michel), George Michel, M.D. (George Michel), Francisco A. Palacios (Palacios), Larkin Community Hospital, Inc. (Larkin), Oracle Health Systems, Inc. (Oracle),<sup>1</sup> James H. Desnick, M.D. (Desnick), Island Trust Co. (Island), Medical Management of America, Inc. (MMA), HCMA, Inc. (HCMA),<sup>2</sup> Morris I. Esformes (Morris Esformes), Philip Esformes (Philip Esformes), Larkin Health Systems, Inc. (LHS), Larkin Community Hospital, LLC (Larkin LLC), Larkin Health Systems, LLC (LHS LLC) (now known as Fair Havens Holding Company, LLC), EMI Enterprises, Inc. (EMI), Morphil Corp. (Morphil), Morr-Jack, Inc. (Morr-Jack), Morsey, LC (Morsey), A.D.M.E. Investment Corp. (ADME Corp.), A.D.M.E. Investment Partners, Ltd. (ADME Ltd.), ALF Holdings, Inc. (ALF Inc.), Courtyard Manor Retirement Living, Inc. (Courtyard Manor Inc.), Courtyard Manor Retirement Investors, Ltd. (Courtyard Manor Ltd.), Courtyard Manor Retirement Living, LLC (Courtyard Manor LLC), Fair Havens Holding Co., LLC (Fair

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<sup>1</sup> Jack Michel, George Michel, Palacios, Larkin, Oracle and ACLF Management Group are collectively referred to as the Michel Defendants.

<sup>2</sup> Desnick, Island, MMA and HCMA are collectively referred to as the Desnick Defendants.

Havens), Jene's Retirement Living, Inc. (Jene's Inc.), Jene's Retirement Investors, Ltd. (Jene's Ltd.), Jene's Retirement Living, LLC (Jene's LLC), La Covadonga Retirement Living, Inc. (La Covadonga Inc.), La Covadonga Retirement Investors, Ltd. (La Covadonga Ltd.), La Covadonga Retirement Living, LLC (La Covadonga LLC), North Miami Retirement Living, Inc. (North Miami), The Pointe Retirement Living, Inc. (Pointe Inc.), The Pointe Retirement Investors, Ltd. (Pointe Ltd.), The Pointe Retirement Living, LLC (Point LLC), Rainbow Retirement Living, Inc. (Rainbow Inc.), Rainbow Retirement Investors, Ltd. (Rainbow Ltd.), Rainbow Retirement Living, LLC (Rainbow LLC), Williamsburg Retirement Living, Inc. (Williamsburg Inc.), Williamsburg Retirement Investors, Ltd. (Williamsburg Ltd.), Williamsburg Retirement Living, LLC (Williamsburg LLC), Maven Retirement Investors, Ltd. (Maven Ltd.), Maven Retirement Living, Inc. (Maven Inc.), State Parkway Associates, Ltd. (State Parkway), ACLF Management Group (ACLF), Ridgeway Associates Ltd. (Ridgeway),<sup>3</sup> and Claudia Pace (Pace) (collectively referred to as Defendants) (hereafter referred to as the Parties), through their authorized representatives.

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<sup>3</sup> EMI, Morphil, Morr-Jack, Morsey, ADME Corp., ADME Ltd., ALF Inc., Courtyard Manor Inc., Courtyard Manor Ltd., Courtyard Manor LLC, Fair Havens, Jene's Inc., Jene's Ltd., Jene's LLC, La Covadonga Inc., La Covadonga Ltd., La Covadonga LLC, North Miami, Pointe Inc., Pointe Ltd., Point LLC, Rainbow Inc., Rainbow Ltd., Rainbow LLC, Williamsburg Inc., Williamsburg Ltd., Williamsburg LLC, Maven Ltd., Maven Inc., State Parkway, and Ridgeway are collectively referred to as the Retirement Home Defendants. Morris Esformes, Philip Esformes, LHS, Larkin LLC, LHS LLC and the Retirement Home Defendants are collectively referred to as the Esformes Defendants.

## II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. From about February 28, 1997 until at least December 31, 1997, one or more of the Desnick Defendants owned, controlled and operated Larkin, a 112-bed hospital located in Miami, Florida. The Michel Defendants, excluding Larkin, operated a gerontology practice in Miami, Florida, which employed Jack Michel, George Michel, and Palacios. From February 28, 1997 to December 31, 1997, Jack Michel and George Michel admitted Medicare and Medicaid beneficiaries as patients to Larkin. In 1997, Oracle, Jack Michel's practice group, was paid by Larkin to operate the Larkin emergency room, radiology and house call departments; the United States (joined by the State of Florida) alleges that these payments constituted kickbacks and illegal arrangements to induce Jack Michel and George Michel to refer patients to Larkin. Additionally, the United States (joined by the State of Florida) alleges that from February 28, 1997 to December 31, 1997, Larkin made other payments to Jack Michel and Oracle, indirectly, including payments controlled by Palacios, and the United States (joined by the State of Florida) alleges that these payments constituted kickbacks and illegal arrangements to induce Jack Michel and George Michel to refer patients to Larkin. Moreover, the United States (joined by the State of Florida) alleges that from February 28, 1997 to December 31, 1997, Larkin paid other physicians, including physicians who held medical directorships at Larkin in 1997, and that these payments constituted kickbacks and illegal arrangements to induce these other physicians to refer patients to Larkin; these physicians (other than Jack Michel) who received payments from Larkin are referred to herein collectively as the Larkin Medical Directors.

B. In late 1997, Jack Michel agreed to purchase Larkin in full and the deal closed in April 1998. Morris Esformes and Philip Esformes owned the Retirement Home Defendants, which were a group of corporations, limited liability companies and limited partnerships that financed, owned, and operated at least nine skilled nursing facilities (SNFs) and assisted living facilities (ALFs). At various times, Pace was the director of operations of several of the Retirement Home Defendants, and was compensated by Larkin and by at least one corporation controlled by Palacios.

C. The United States (joined by the State of Florida) alleges that from February 28, 1997 to on or about May 27, 1998 (the date the 1997 Larkin Cost Report was submitted), the Desnick Defendants, the Michel Defendants, ADME Corp., ADME Ltd.<sup>4</sup>, Morris Esformes, and Philip Esformes 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. §§ 1395-1395ggg, and the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396v.

D. The United States (joined by the State of Florida) contends that from January 1, 1998 to December 31, 1999, the Michel Defendants, the Esformes Defendants and Pace submitted or caused to be submitted claims for payment to the Medicare Program and the Medicaid Program.

E. The United States filed a civil action alleging the Covered Conduct entitled *United States v. Jack Jacobo Michel, M.D., et al.* (S.D. Fla. No. 04-CIV-21579) in the United States District Court for the Southern District of Florida on or about June 29, 2004.

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<sup>4</sup> ADME Corp. and ADME Ltd. together operated Oceanside Extended Care (Oceanside), a skilled nursing facility. References to ADME Corp. and ADME Ltd. are limited to their operation of Oceanside.

The State of Florida intervened in this action. This lawsuit is referred to herein as the Civil Action.

F. The United States (joined by the State of Florida) contends that it has certain civil claims, as specified in Paragraph III C below (and Paragraph III D below with respect to the State of Florida), and as alleged in the Civil Action against the Desnick Defendants, the Michel Defendants, Morris Esformes, Philip Esformes, ADME Corp., and ADME Ltd. for engaging in the following conduct during the period from February 28, 1997 through and including the filing of the 1997 Cost Report on or about May 28, 1998: (1) the payment of kickbacks and other illegal remuneration to Jack Michel through (a) Oracle, (b) other corporations owned and/or controlled by Palacios, including but not limited to Advocare Health Services, Inc. and Lipton and Associates, Inc., and (c) Multi-Med, Inc., in return for the admission of Medicare and Medicaid beneficiaries to Larkin, including the patients who resided in Oceanside, by Jack Michel and George Michel, and (2) that these admissions included medically unnecessary treatment and services. Additionally, the United States (joined by the State of Florida) contends that it has certain civil claims, as specified in Paragraph III D below, against the Desnick Defendants, Larkin and Jack Michel for engaging in the following conduct during the period from February 28, 1997 through and including the filing of the 1997 Cost Report on or about May 28, 1998: the payment of kickbacks and other illegal remuneration to the Larkin Medical Directors, in return for the admission of Medicare and Medicaid beneficiaries to Larkin by the Larkin Medical Directors.

G. The United States (joined by the State of Florida) contends that it has certain civil claims, as specified in Paragraph III C below (and Paragraph III D below with respect

to the State of Florida) and as alleged in the Civil Action against the Michel Defendants, the Esformes Defendants and Pace for engaging in the following conduct during the period from January 1, 1998 through December 31, 1999: the admission of Medicare and Medicaid beneficiaries to Larkin for medically unnecessary treatment and services by George Michel, including the patients who resided in the Retirement Home Defendants. (The conduct identified in Paragraphs F and G is hereinafter referred to as the Covered Conduct).

H. This Agreement is neither an acknowledgment of the validity of the claims alleged by the United States (as joined by the State of Florida) nor an admission of liability by the Defendants. Moreover, the Agreement is not a concession by the United States or the State of Florida that their claims are not well founded.

I. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

### III. TERMS AND CONDITIONS

A. Defendants agree to pay to the United States an aggregate amount of \$15 million (the Settlement Amount) within thirty (30) days of the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Department of Justice.

B. If the Defendants make their respective payments within thirty (30) days of the effective date of the Agreement, the United States and the State of Florida will file a dismissal with prejudice of the Civil Action within ten (10) business days of the receipt of the Settlement Amount.



C. Subject to the exceptions in Paragraph III E below, in consideration of the obligations of the Defendants set forth in this Agreement, conditioned upon the Defendants' full payment of the Settlement Amount, and subject to Paragraph III N below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or of any payments under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release the Defendants from any civil or administrative monetary claim the United States has or may have 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; the civil monetary penalty provision of the Stark Statute, 42 U.S.C. § 1395nn(g)(3); or the common law theories of payment by mistake, unjust enrichment, and fraud. This Agreement releases no individuals other than as expressly described in the Covered Conduct.

D. Subject to the exceptions in Paragraph III E below, in consideration of the obligations of the Defendants set forth in this Agreement, conditioned upon the Defendants' full payment of the Settlement Amount, and subject to Paragraph III N below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or of any payments under this Agreement), the State of Florida agrees to release the Defendants from: any civil or administrative monetary claim the State of Florida has or may have for the Covered Conduct under the Florida False Claims Act, §§ 68.081 through 68.091, Fla. Stat.; the civil monetary penalty provision of the Patient Self-Referral Act of 1992, § 456.053, Fla. Stat.; or the common law theories of breach of contract, payment by mistake, unjust enrichment and fraud; §§ 409.913, 409.9131, 409.020,

409.920, 409.920(2)(e), 409.9201, Fla. Stat., 456.054, Fla. Stat., 812.035, Fla. Stat., or 817.505, Fla. Stat. This Agreement releases no individuals other than as expressly described in the Covered Conduct.

E. 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 all Defendants) are the following:

1. Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
2. Any criminal liability;
3. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
4. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
5. Any liability based upon such obligations as are created by this Agreement;
6. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
7. Any liability for failure to deliver goods or services due.

F. Defendants waive and will not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses 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. 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.

G. Defendants specifically reserve and do not waive any defense or claim in any criminal prosecution or administrative action, except as specified in the preceding paragraph.

H. Defendants fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct, the filing of the Civil Action, and the United States' investigation and prosecution thereof.

I. Defendants fully and finally release the State of Florida, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Defendants have asserted, could have asserted, or may assert in the future against the State of Florida, its agencies, employees, servants, and agents, related to the Covered Conduct, the intervention into the Civil Action, the initiation of any administrative proceedings related to the Covered Conduct, and the State of Florida's investigation and prosecution thereof.

J. The Settlement Amount 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 payer, related to the Covered Conduct; and Defendants 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.

K. Defendants agree to the following:

1. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR) § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of any of the Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- a. the matters covered by this Agreement,
- b. the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement,
- c. Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),
- d. any mediation costs and the negotiation and performance of this Agreement,

e. the payments Defendants make to the United States pursuant to this Agreement, and

2. Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for in non-reimbursable cost centers by Defendants, and Defendants 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 Defendants or any of their subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

3. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the effective date of this Agreement they 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 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 Defendants or any of their subsidiaries or affiliates, 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. Defendants agree that the United States and the State of Florida, at a minimum, will be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, 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 and the State of Florida reserve their rights to disagree with any calculations submitted by Defendants or any of their subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Defendants or any of their subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States and the State of Florida to examine or reexamine the unallowable costs described in this Paragraph.

L. This Agreement is intended to be for the benefit of the named Parties and their successors, transferees, heirs, executors, administrators, and assigns (as alleged in the Civil Action) only. The Parties do not release any claims against any other person or entity, except to the extent provided for below in this paragraph. Defendants agree that they waive and will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payers based upon the claims defined as Covered Conduct.

M. Defendants warrant that they have reviewed their financial situations and that Defendants currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following their payments to the United States 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 Defendants, 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 and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Defendants were or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

N. If, within 91 days of the Effective Date of or any payment under this Agreement, any of the Defendants commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of Defendant's debts, or seeking to adjudicate any of the Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant or for all or any substantial part of Defendant's assets, the Parties agree as follows:

1. Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Defendants will not argue or otherwise take the position in any such case, proceeding, or action that: (i) Defendants' obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) Defendants were 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 Defendants.

2. If any Defendant'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, and if, as a result of such action, the United States shall not receive the full Settlement Amount or shall lose its right to receive the full Settlement Amount, the United States (with or without the concurrence or approval of the State of Florida), at its sole option, may rescind the releases granted in this Agreement to the Defendant or Defendants whose obligations are avoided, and bring any civil and/or administrative claim, action, or proceeding against that Defendant or those Defendants for the claims that would otherwise be covered by the releases provided in Paragraph III C above, and the dismissal with prejudice described in Paragraph III B above. In the event the conditions described in the foregoing sentence occur, that Defendant or those Defendants agree that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Defendants 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 Defendant or those Defendants will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) that Defendant or those Defendants 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 180 calendar days of written notification to that Defendant or those Defendants that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on June 29, 2004; and (iii) the United States has a valid claim against that Defendant or those Defendants in the amount of \$33,166,875.00, less the aggregate of all payments received by the United States, and not recaptured in any Bankruptcy proceeding, the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

3. Defendants acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

O. Each Party to this Agreement will bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

P. Defendants represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

Q. 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 Southern District of Florida.

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

S. The individuals signing this Agreement on behalf of the Defendants represent and warrant that they are authorized by the Defendants to execute this Agreement. The United States and the State of Florida signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

U. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

V. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

W. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

X. All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; or (b) sent to the parties at their respective addresses indicated herein by private overnight courier service providing for a receipted delivery. The respective addresses to be used for all such notices, demands or requests are as follows:

If to the United States:

Alicia J. Bentley, Esq.  
U.S. Department of Justice, Civil Division  
601 D. Street, N.W., Room 9705  
Washington, DC 20004  
Telephone: 202-616-9854

with a copy, which shall not constitute notice, to:

Michael F. Hertz, Esq.  
Director, Fraud Section  
Commercial Litigation Branch  
U.S. Department of Justice, Civil Division  
601 D. Street, N.W., Room 9902  
Washington, DC 20004  
Telephone: (202) 514-7179

If to the State of Florida:

Mark S. Thomas, Esq.  
Bureau Chief, Northern District  
Medicaid Fraud Control Unit  
Office of the Attorney General  
PL -01 The Capitol  
Tallahassee, FL 32399-1050

If to the Michel Defendants:

Lenard H. Gorman, Esq.

Lenard H. Gorman, P.A.  
Penthouse 1275  
1320 South Dixie Highway  
Coral Gables, FL 33146  
Telephone: (305) 661-6664

If to the Desnick Defendants:

Alan E. Reider, Esq.  
Arent Fox PLLC  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5339  
Telephone: (202) 857-6000

Michael Trucco, Esq.  
Stamos & Trucco  
30 West Monroe, Suite 1600  
Chicago, IL 60603  
Telephone: (312) 630-1214

Esformes: If to the Retirement Home Defendants, Morris Esformes and/or Philip

Ronald B. Ravikoff, Esq.  
Michael S. Pasano, Esq.  
Zuckerman Spaeder LLP  
201 South Biscayne Boulevard, Suite 900  
Miami, FL 33131-4326  
Telephone: (305) 358-5000

with a copy, which shall not constitute notice, to:

Husch & Eppenberger, LLC  
235 E. High Street, Suite 200  
Jefferson City, MO 65101  
Attn: Harvey M. Tettlebaum  
Telephone: (573) 761-1107

If to Pace:

Guy A. Rasco, Esq.  
Devine, Goodman, Pallot & Wells  
777 Brickell Avenue  
Suite 850

Miami, FL 33131  
Telephone: (305) 374-8200

If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this paragraph III, X.

THE UNITED STATES OF AMERICA

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

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

ALICIA J. BENTLEY  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice

THE STATE OF FLORIDA

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

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

L. CLAYTON ROBERTS  
Deputy Attorney General  
Office of the Attorney General

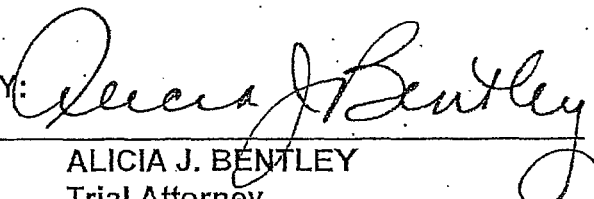
DEFENDANTS

Guy A. Rasco, Esq.  
Devine, Goodman, Pallot & Wells  
777 Brickell Avenue  
Suite 850  
Miami, FL 33131  
Telephone: (305) 374-8200

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THE UNITED STATES OF AMERICA

DATED: 11-16-06

BY:   
ALICIA J. BENTLEY  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice

THE STATE OF FLORIDA

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

BY: \_\_\_\_\_  
GEORGE S. LEMIEUX  
Deputy Attorney General  
Office of the Attorney General

# UNITED STATES DEPARTMENT OF JUSTICE

Civil Division  
Commercial Litigation Branch  
Civil Fraud Section

TELEPHONE: (202) 616-9854  
FACSIMILE: (202) 514-0280  
DATE: November 22, 2006

<b>Mailing Address:</b>  P.O. Box 261 Ben Franklin Station Washington, D.C. 20044	<b>Street Address:</b>  601 D Street, N.W. Room 9544 Washington, D.C. 20004
---	---

## FACSIMILE TRANSMISSION RECORD

**TO:** Ronald B. Ravikoff, Esq.

**Facsimile No.:**

(305) 579-9749

**FROM:** Alicia J. Bentley

**Telephone No.:**

(202) 616-9854

TOTAL NUMBER OF PAGES INCLUDING COVER PAGE: 3

Dear Ron

Here are the State of Florida's signature pages for the Settlement Agreement and the 11/30/06 Addendum.

Alicia



RECEIVED  
ZUCKERMAN, SPAEDER  
TAYLOR & EVANS, LLP

NOV 22 2006

SECY: \_\_\_\_\_  
TTY: \_\_\_\_\_

*This written message is for the exclusive use of the addressee and contains confidential, privileged and non-disclosable information. If the recipient of this message is not the addressee, or a person responsible for delivering the message to the addressee, such recipient is prohibited from reading or using this message in any way. If you have received this message by mistake, please call the sender immediately and destroy the facsimile message. Thank you.*

Miami, FL 33131  
Telephone: (305) 374-8200

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THE UNITED STATES OF AMERICA

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

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

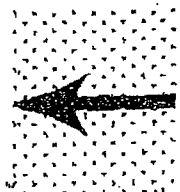
ALICIA J. BENTLEY  
Trial Attorney,  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice

THE STATE OF FLORIDA

DATED: 22 Nov 06

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

L. CLAYTON ROBERTS  
Deputy Attorney General  
Office of the Attorney General



DEFENDANTS



DATED: 10/19/06

BY:   
JACK JACOBO MICHEL, M.D.

DATED: 10/19/06

BY:   
GEORGE MICHEL, M.D.

DATED: 10/19/06

BY:   
FRANCISCO A. PALACIOS

DATED: 10/19/06

BY:   
LARKIN COMMUNITY HOSPITAL, INC.

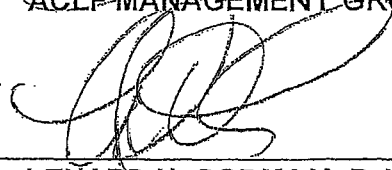
DATED: 10/19/06

BY:   
ORACLE HEALTH SYSTEMS, INC.

DATED: 10/19/06

BY:   
ACLF MANAGEMENT GROUP

DATED: 10/20/06

BY:   
LENARD H. GORMAN, P.A.  
LENARD H. GORMAN  
Counsel for Defendants Jack Michel  
and Larkin Community Hospital, Inc.

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

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

Counsel for Defendants Jack Michel  
and Larkin Community Hospital, Inc.

DATED: 10/20/06

BY: 

JOSEPH S. ROSENBAUM, P.A.  
JOSEPH S. ROSENBAUM  
Counsel for Defendants Jack  
Michael, Larkin Community Hospital,  
Inc. and Related Entities

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

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

JAMES H. DESNICK, M.D.

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

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

ISLAND TRUST CO.

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

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

MEDICAL MANAGEMENT OF  
AMERICA, INC.

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

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

HCMA, INC.

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

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

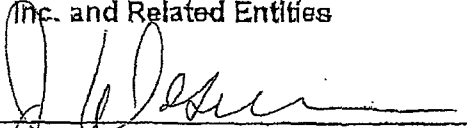
STAMOS & TRUCCO  
MICHAEL TRUCCO  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
Inc., and HCMA, Inc.

Counsel for Defendants Jack Michel  
and Larkin Community Hospital, Inc.

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

BY: \_\_\_\_\_  
JOSEPH S. ROSENBAUM, P.A.  
JOSEPH S. ROSENBAUM  
Counsel for Defendants Jack  
Michael, Larkin Community Hospital,  
Inc. and Related Entities


DATED: 11/14/06

BY:   
JAMES H. DESNICK, M.D.

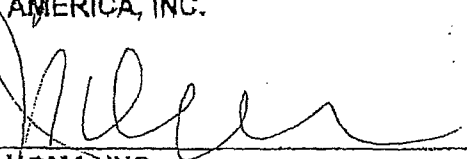
DATED: 11/14/06

BY:   
ISLAND TRUST CO.

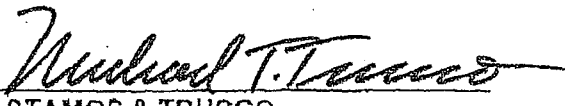
DATED: 11/14/06

BY:   
MEDICAL MANAGEMENT OF  
AMERICA, INC.

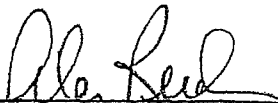
DATED: 11/14/06

BY:   
HCMA, INC.

DATED: 11/14/06

BY:   
STAMOS & TRUCCO  
MICHAEL TRUCCO  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
Inc., and HCMA, Inc.

DATED: 10/18/06

BY: 

~~ALAN REIDER~~  
RONALD CLARK  
ARENT FOX PLLC  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
Inc., and HCMA, Inc.

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

BY: \_\_\_\_\_  
MORRIS I. ESFORMES

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

BY: \_\_\_\_\_  
PHILIP ESFORMES

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

BY: \_\_\_\_\_  
LARKIN HEALTH SYSTEMS, INC.

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

BY: \_\_\_\_\_  
LARKIN COMMUNITY HOSPITAL, LLC

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

BY: \_\_\_\_\_  
EMI ENTERPRISES, INC.

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

BY: \_\_\_\_\_  
MORPHIL CORP.

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

BY: \_\_\_\_\_  
MORR-JACK, INC.

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

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

ALAN REIDER  
RONALD CLARK  
ARENT FOX PLLC  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
Inc., and HCMA, Inc.

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

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

MORRIS I. ESFORMES

DATED: 10/18/06

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

PHILIP ESFORMES

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

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

LARKIN HEALTH SYSTEMS, INC.

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

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

LARKIN COMMUNITY HOSPITAL, LLC

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

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

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

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

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

ALAN REIDER  
RONALD CLARK  
ARENT FOX PLLC  
Counsel for Defendants  
James H. Desnick, M.D.; Island Trust  
Co., Medical Management of America,  
Inc., and HCMA, Inc.

DATED: 10/18/06

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

MORRIS I. ESFORMES

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

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

PHILIP ESFORMES

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

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

LARKIN HEALTH SYSTEMS, INC.

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

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

LARKIN COMMUNITY HOSPITAL, LLC

DATED: 10/18/06

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

EMI ENTERPRISES, INC.

DATED: 10/18/06

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

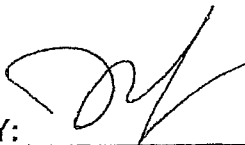
MORPHIL CORP.

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

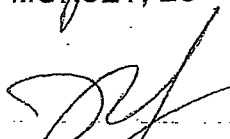
BY: \_\_\_\_\_

MORR-JACK, INC.


DATED: 10/18/06

BY:   
MORSEY, LC

DATED: 10/18/06

BY:   
A.D.M.E. INVESTMENT CORP.


DATED: 10/18/06

BY:   
A.D.M.E. INVESTMENT PARTNERS,  
LTD.

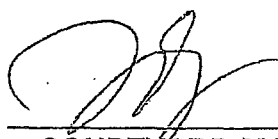
DATED: 10/18/06

BY:   
ALF HOLDINGS, INC.

DATED: 10/18/06

BY:   
COURTYARD MANOR RETIREMENT  
LIVING, INC.

DATED: 10/18/06

BY:   
COURTYARD MANOR RETIREMENT  
INVESTORS, LTD.

DATED: 10/18/06

BY:   
COURTYARD MANOR RETIREMENT  
LIVING, LLC

DATED: 10/18/06

BY:   
FAIR HAVENS HOLDING CO., LLC

DATED: 10/18/06

BY:   
JENE'S RETIREMENT LIVING, INC.

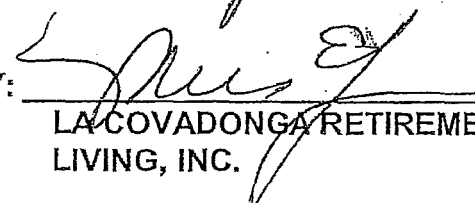
DATED: 10/18/06

BY:   
JENE'S RETIREMENT INVESTORS,  
LTD.

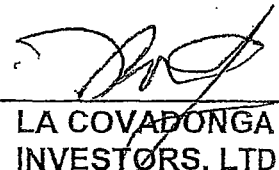
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BY:   
JENE'S RETIREMENT LIVING, LLC

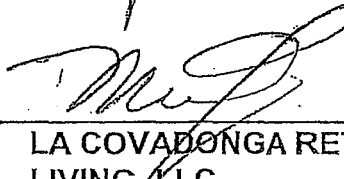
DATED: 10/18/06

BY:   
LA COVADONGA RETIREMENT  
LIVING, INC.

DATED: 10/18/06

BY:   
LA COVADONGA RETIREMENT  
INVESTORS, LTD.

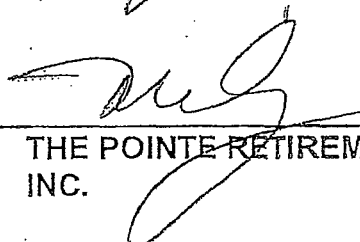
DATED: 10/18/06

BY:   
LA COVADONGA RETIREMENT  
LIVING, LLC

DATED: 10/18/06

BY:   
NORTH MIAMI RETIREMENT LIVING,  
INC.

DATED: 10/18/06

BY:   
THE POINTE RETIREMENT LIVING,  
INC.



DATED: 10/18/06

BY:   
THE POINTE RETIREMENT  
INVESTORS, LTD.


DATED: 10/18/06

BY:   
THE POINTE RETIREMENT LIVING,  
LLC

DATED: 10/18/06

BY:   
RAINBOW RETIREMENT LIVING, INC.


DATED: 10/18/06

BY:   
RAINBOW RETIREMENT INVESTORS,  
LTD.

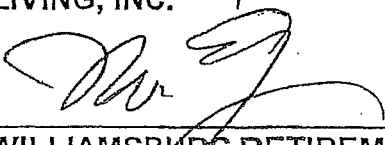
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BY:   
RAINBOW RETIREMENT LIVING, LLC

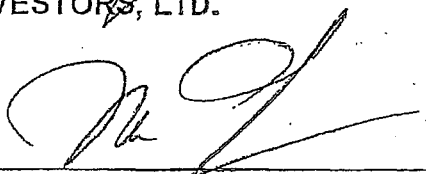
DATED: 10/18/06

BY:   
WILLIAMSBURG RETIREMENT  
LIVING, INC.

DATED: 10/18/06

BY:   
WILLIAMSBURG RETIREMENT  
INVESTORS, LTD.

DATED: 10/18/06

BY:   
WILLIAMSBURG RETIREMENT  
LIVING, LLC


DATED: 10/18/06

BY:   
MAVEN RETIREMENT INVESTORS,  
LTD.

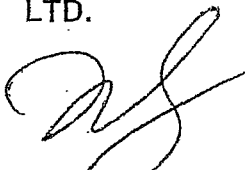
DATED: 10/18/06

BY:   
MAVEN RETIREMENT LIVING, INC.

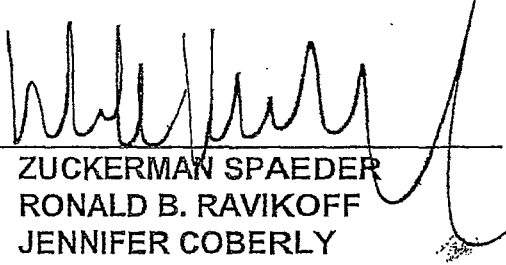
DATED: 10/18/06

BY:   
STATE PARKWAY ASSOCIATES,  
LTD.

DATED: 10/18/06

BY:   
RIDGEWAY ASSOCIATES LTD.

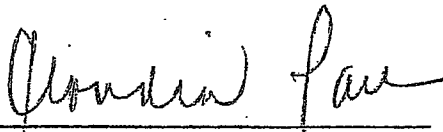
DATED: 10/23/06

BY:   
ZUCKERMAN SPAEDER  
RONALD B. RAVIKOFF  
JENNIFER COBERLY  
MICHAEL PASANO

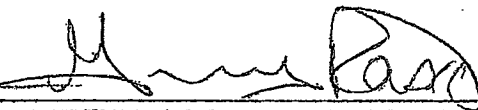
Counsel for Defendants  
Morris I. Esformes, Philip Esformes,  
Larkin Health Systems, Inc., Larkin  
Community Hospital, LLC, Larkin  
Health Systems, LLC, EMI  
Enterprises, Inc., Morphil Corp.,  
Morr-Jack, Inc., Morse, LC, A.D.M.E.  
Investment Corp., A.D.M.E.  
Investment Partners, Ltd., ALF  
Holdings, Inc., Courtyard Manor  
Retirement Living, Inc., Courtyard  
Manor Retirement Investors, Ltd.,  
Courtyard Manor Retirement Living,  
LLC, Fair Havens Holding Co., LLC,  
Jene's Retirement Living, Inc., Jene's  
Retirement Investors, Ltd., Jene's

Retirement Living, LLC, La  
Covadonga Retirement Living, Inc.,  
La Covadonga Retirement Investors,  
Ltd., La Covadonga Retirement  
Living, LLC, North Miami Retirement  
Living, Inc., The Pointe Retirement  
Living, Inc., The Pointe Retirement  
Investors, Ltd., The Pointe  
Retirement Living, LLC, Rainbow  
Retirement Living, Inc., Rainbow  
Retirement Investors, Ltd., Rainbow  
Retirement Living, LLC, Williamsburg  
Retirement Living, Inc., Williamsburg  
Retirement Investors, Ltd.,  
Williamsburg Retirement Living, LLC,  
Maven Retirement Investors, Ltd.,  
Maven Retirement Living, Inc., State  
Parkway Associates, Ltd., and  
Ridgeway Associates Ltd.

DATED: 11/16/06

BY:   
CLAUDIA PACE

DATED: 11/16/06

BY:   
DEVINE, GOODMAN, PALLOT & WELLS  
GUY A. RASCO  
Counsel for Claudia Pace



## ADDENDUM AND MODIFICATION TO SETTLEMENT AGREEMENT

This is an addendum and modification to the Settlement Agreement 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), and the State of Florida's Agency for Healthcare Administration (AHCA), acting through the Office of the Attorney General (FL AG) (collectively, the State of Florida); and Defendants Jack Jacobo Michel, M.D. (Jack Michel), George Michel, M.D. (George Michel), Francisco A. Palacios (Palacios), Larkin Community Hospital, Inc. (Larkin), Oracle Health Systems, Inc. (Oracle),<sup>1</sup> James H. Desnick, M.D. (Desnick), Island Trust Co. (Island), Medical Management of America, Inc. (MMA), HCMA, Inc. (HCMA),<sup>2</sup> Morris I. Esformes (Morris Esformes), Philip Esformes (Philip Esformes), Larkin Health Systems, Inc. (LHS), Larkin Community Hospital, LLC (Larkin LLC), Larkin Health Systems, LLC (LHS LLC) (now known as Fair Havens Holding Company, LLC), EMI Enterprises, Inc. (EMI), Morphil Corp. (Morphil), Morr-Jack, Inc. (Morr-Jack), Morsey, LC (Morsey), A.D.M.E. Investment Corp. (ADME Corp.), A.D.M.E. Investment Partners, Ltd. (ADME Ltd.), ALF Holdings, Inc. (ALF Inc.), Courtyard Manor Retirement Living, Inc. (Courtyard Manor Inc.), Courtyard Manor Retirement Investors, Ltd. (Courtyard Manor Ltd.), Courtyard Manor Retirement Living, LLC (Courtyard Manor LLC), Fair Havens Holding Co., LLC (Fair Havens), Jene's Retirement Living, Inc. (Jene's Inc.), Jene's Retirement Investors, Ltd. (Jene's Ltd.), Jene's Retirement Living, LLC (Jene's

---

<sup>1</sup> Jack Michel, George Michel, Palacios, Larkin, Oracle and ACLF Management Group are collectively referred to as the Michel Defendants.

<sup>2</sup> Desnick, Island, MMA and HCMA are collectively referred to as the Desnick Defendants.

LLC), La Covadonga Retirement Living, Inc. (La Covadonga Inc.), La Covadonga Retirement Investors, Ltd. (La Covadonga Ltd.), La Covadonga Retirement Living, LLC (La Covadonga LLC), North Miami Retirement Living, Inc. (North Miami), The Pointe Retirement Living, Inc. (Pointe Inc.), The Pointe Retirement Investors, Ltd. (Pointe Ltd.), The Pointe Retirement Living, LLC (Point LLC), Rainbow Retirement Living, Inc. (Rainbow Inc.), Rainbow Retirement Investors, Ltd. (Rainbow Ltd.), Rainbow Retirement Living, LLC (Rainbow LLC), Williamsburg Retirement Living, Inc. (Williamsburg Inc.), Williamsburg Retirement Investors, Ltd. (Williamsburg Ltd.), Williamsburg Retirement Living, LLC (Williamsburg LLC), Maven Retirement Investors, Ltd. (Maven Ltd.), Maven Retirement Living, Inc. (Maven Inc.), State Parkway Associates, Ltd. (State Parkway), ACLF Management Group (ACLF), Ridgeway Associates Ltd. (Ridgeway),<sup>9</sup> and Claudia Pace (Pace) (collectively referred to as Defendants), dated \_\_\_\_\_, which is hereby amended by deleting Section III(A) thereof and replacing same with the following new Section III(A):

---

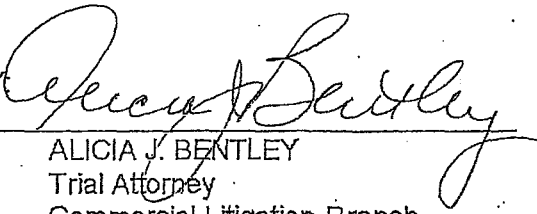
<sup>9</sup> EMI, Morphil, Morr-Jack, Morse, ADME Corp., ADME Ltd., ALF Inc., Courtyard Manor Inc., Courtyard Manor Ltd., Courtyard Manor LLC, Fair Havens, Jene's Inc., Jene's Ltd., Jene's LLC, La Covadonga Inc., La Covadonga Ltd., La Covadonga LLC, North Miami, Pointe Inc., Pointe Ltd., Point LLC, Rainbow Inc., Rainbow Ltd., Rainbow LLC, Williamsburg Inc., Williamsburg Ltd., Williamsburg LLC, Maven Ltd., Maven Inc., State Parkway, and Ridgeway are collectively referred to as the Retirement Home Defendants. Morris Esformes, Philip Esformes, LHS, Larkin LLC, LHS LLC and the Retirement Home Defendants are collectively referred to as the Esformes Defendants.

III. TERMS AND CONDITIONS

A. Defendants agree to pay to the United States an aggregate amount of \$15,400,000 (the Settlement Amount) on or before November 30, 2006 by electronic funds transfer pursuant to written instructions to be provided by the Department of Justice.

THE UNITED STATES OF AMERICA

DATED: 11/20/06

BY:   
ALICIA J. BENTLEY  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice

THE STATE OF FLORIDA

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

BY: \_\_\_\_\_  
L. CLAYTON ROBERTS  
Deputy Attorney General  
Office of the Attorney General

DEFENDANTS

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

BY: \_\_\_\_\_  
JACK JACOBO MICHEL, M.D.

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

BY: \_\_\_\_\_  
GEORGE MICHEL, M.D.

THE UNITED STATES OF AMERICA

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

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

ALICIA J. BENTLEY  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice

THE STATE OF FLORIDA

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

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

L. CLAYTON ROBERTS  
Deputy Attorney General  
Office of the Attorney General

DEFENDANTS

DATED: 11/13/06

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

  
JACK JACOBO MICHEL, M.D.

DATED: 11/13/06

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

  
GEORGE MICHEL, M.D.

DATED: 11/13/06

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

  
FRANCISCO A. PALACIOS

DATED: 11/13/06

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

  
LARKIN COMMUNITY HOSPITAL, INC.



NOV-22-2006 11:21

# UNITED STATES DEPARTMENT OF JUSTICE

Civil Division  
Commercial Litigation Branch  
Civil Fraud Section

TELEPHONE: (202) 616-9854  
FACSIMILE: (202) 514-0280  
DATE: November 22, 2006

<b>Mailing Address:</b> P.O. Box 261 Ben Franklin Station Washington, D.C. 20044	<b>Street Address:</b> 601 D Street, N.W. Room 9544 Washington, D.C. 20004
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## FACSIMILE TRANSMISSION RECORD

**TO:** Ronald B. Ravikoff, Esq.

**Facsimile No.:** (305) 579-9749

**FROM:** Alicia J. Bentley

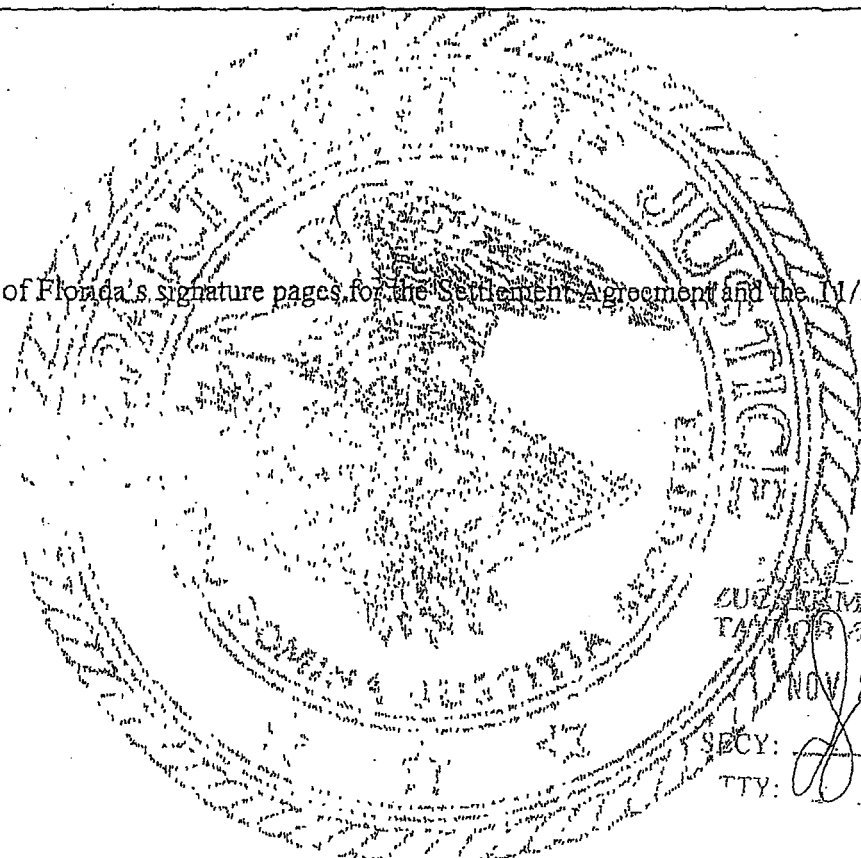
**Telephone No.:** (202) 616-9854

**TOTAL NUMBER OF PAGES INCLUDING COVER PAGE: 3**

Dear Ron

Here are the State of Florida's signature pages for the Settlement Agreement and the 11/30/06 Addendum.

Alicia



RECEIVED  
CUSHMAN, SPAEDER  
TAYLOR & EVANS, LLP

NOV 22 2006

SECY:

TTY:

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THE UNITED STATES OF AMERICA

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

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

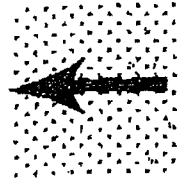
ALICIA J. BENTLEY  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice

THE STATE OF FLORIDA

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

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

L. CLAYTON ROBERTS  
Deputy Attorney General  
Office of the Attorney General



DEFENDANTS

DATED: 11/13/06

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

JACK JACOBO MICHEL, M.D.

DATED: 11/13/06

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

GEORGE MICHEL, M.D.

DATED: 11/13/06

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

FRANCISCO A. PALACIOS

DATED: 11/13/06

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

LARKIN COMMUNITY HOSPITAL, INC.

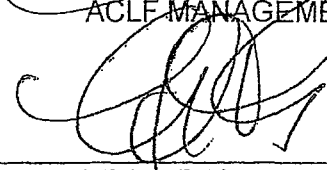
DATED: 11/13/06

BY:  President  
ORACLE HEALTH SYSTEMS, INC.

DATED: 11/13/06

BY:  President  
ACLF MANAGEMENT GROUP

DATED: 11/15/06

BY:   
LENARD H. GORMAN, P.A.  
LENARD H. GORMAN  
Counsel for Defendants Jack Michel and  
Larkin Community Hospital, Inc.

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

BY: \_\_\_\_\_  
JAMES H. DESNICK, M.D.

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

BY: \_\_\_\_\_  
ISLAND TRUST CO.

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

BY: \_\_\_\_\_  
MEDICAL MANAGEMENT OF  
AMERICA, INC.

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

BY: \_\_\_\_\_  
HCMA, INC.

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

BY: \_\_\_\_\_  
ORACLE HEALTH SYSTEMS, INC.

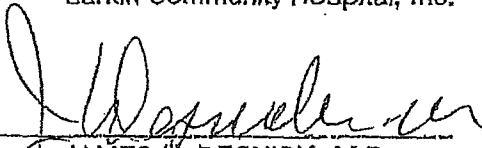
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BY: \_\_\_\_\_  
ACLF MANAGEMENT GROUP

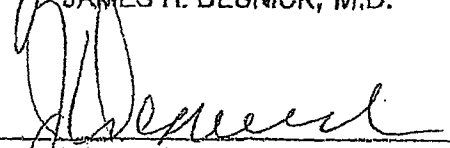
DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LENARD H. GORMAN, P.A.  
LENARD H. GORMAN  
Counsel for Defendants Jack Michel and  
Larkin Community Hospital, Inc.


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

BY:   
JAMES H. DESNICK, M.D.


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

BY:   
ISLAND TRUST CO.

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

BY:   
MEDICAL MANAGEMENT OF  
AMERICA, INC.

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

BY:   
HCMA, INC.

DATED: 11/14/06

BY: Michael T. Trucco

STAMOS & TRUCCO  
MICHAEL TRUCCO  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
Inc., and HCMA, Inc.

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

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

ALAN REIDER  
RONALD CLARK  
ARENT FOX PLLC  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
Inc., and HCMA, Inc.

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

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

MORRIS I. ESFORMES

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

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

PHILIP ESFORMES

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

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

LARKIN HEALTH SYSTEMS, INC.

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

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

LARKIN COMMUNITY HOSPITAL, LLC

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

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

EMI ENTERPRISES, INC.

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

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

STAMOS & TRUCCO  
MICHAEL TRUCCO  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
Inc., and HCMA, Inc.

DATED: 11/15/06

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

ALAN REIDER  
RONALD CLARK  
ARENT FOX PLLC  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
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BY: \_\_\_\_\_

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

PHILIP ESFORMES

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

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

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MICHAEL TRUCCO  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
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DATED: \_\_\_\_\_

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

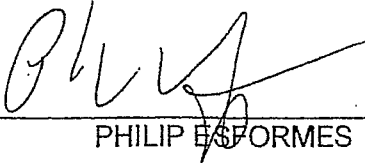
ALAN REIDER  
RONALD CLARK  
ARENT FOX PLLC  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
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DATED: \_\_\_\_\_

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

MORRIS I. ESFORMES

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

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

PHILIP ESFORMES

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

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

LARKIN HEALTH SYSTEMS, INC.

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

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

LARKIN COMMUNITY HOSPITAL, LLC

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

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

EMI ENTERPRISES, INC.

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

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

STAMOS & TRUCCO  
MICHAEL TRUCCO  
Counsel for Defendants  
James H. Desnick, M.D.; Island Trust  
Co., Medical Management of America,  
Inc., and HCMA, Inc.

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

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

ALAN REIDER  
RONALD CLARK  
ARENT FOX PLLC  
Counsel for Defendants  
James H. Desnick, M.D., Island Trust  
Co., Medical Management of America,  
Inc., and HCMA, Inc.

DATED: 11/5/06

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

MORRIS I. ESFORMES

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

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

PHILIP ESFORMES

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

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

LARKIN HEALTH SYSTEMS, INC.

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

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

LARKIN COMMUNITY HOSPITAL, LLC

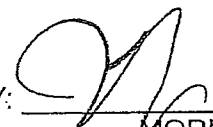
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EMI ENTERPRISES, INC.



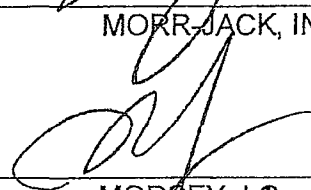
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MORPHIL CORP.

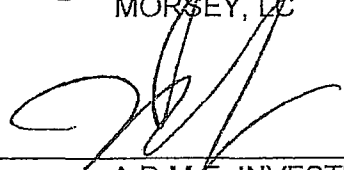
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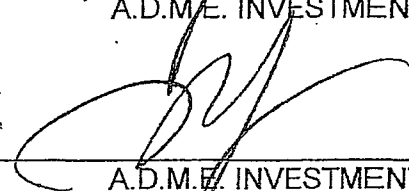
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BY:   
MORSEY, LC

DATED: 11-15-06

BY:   
A.D.M.E. INVESTMENT CORP.

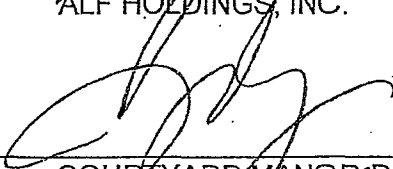
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BY:   
A.D.M.E. INVESTMENT PARTNERS,  
LTD.

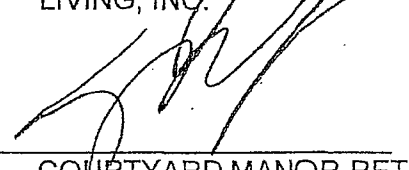
DATED: 11-15-06

BY:   
ALF HOLDINGS, INC.

DATED: 11-15-06

BY:   
COURTYARD MANOR RETIREMENT  
LIVING, INC.

DATED: 11-15-06

BY:   
COURTYARD MANOR RETIREMENT  
INVESTORS, LTD.

DATED: 11-15-06

BY:   
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LIVING, LLC

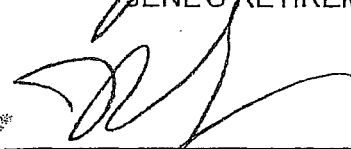
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BY:   
FAIR HAVENS HOLDING CO., LLC

DATED: 11-15-06

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JENE'S RETIREMENT LIVING, INC.

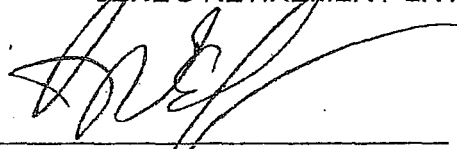
DATED: 11-15-06

BY:   
JENE'S RETIREMENT INVESTORS,  
LTD.

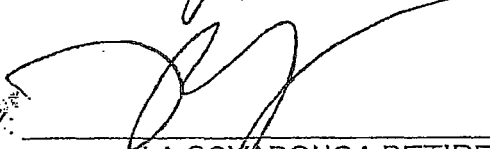
DATED: 11-15-06

BY:   
JENE'S RETIREMENT LIVING, LLC


DATED: 11-15-06

BY:   
LA COVADONGA RETIREMENT  
LIVING, INC.

DATED: 11-15-06

BY:   
LA COVADONGA RETIREMENT  
INVESTORS, LTD.


DATED: 11-15-06

BY:   
LA COVADONGA RETIREMENT  
LIVING, LLC


DATED: 11-15-06

BY:   
NORTH MIAMI RETIREMENT LIVING,  
INC.

DATED: 11-15-06

BY:   
THE POINTE RETIREMENT LIVING,  
INC.

DATED: 11-15-06

BY:   
THE POINTE RETIREMENT  
INVESTORS, LTD.

DATED: 11-15-06

BY:   
THE POINTE RETIREMENT LIVING,  
LLC

DATED: 11-15-06

BY:   
RAINBOW RETIREMENT LIVING, INC.

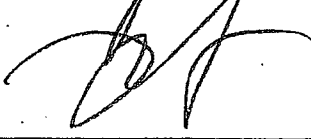
DATED: 11-15-06

BY:   
RAINBOW RETIREMENT INVESTORS,  
LTD.


DATED: 11-15-06

BY:   
RAINBOW RETIREMENT LIVING, LLC


DATED: 11-15-06

BY:   
WILLIAMSBURG RETIREMENT  
LIVING, INC.


DATED: 11-15-06

BY:   
WILLIAMSBURG RETIREMENT  
INVESTORS, LTD.


DATED: 11-15-06

BY:   
WILLIAMSBURG RETIREMENT  
LIVING, LLC


DATED: 11-15-06

BY:   
MAVEN RETIREMENT INVESTORS,  
LTD.

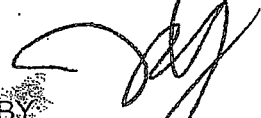
DATED: 11-15-06

BY:   
MAVEN RETIREMENT LIVING, INC.


DATED: 11-15-06

BY:   
STATE PARKWAY ASSOCIATES, LTD.

DATED: 11-15-06

BY:   
RIDGEWAY ASSOCIATES LTD.

DATED: 11/16/06

BY:   
ZUCKERMAN SPAEDER  
RONALD B. RAVIKOFF  
JENNIFER COBERLY  
MICHAEL PASANO

Counsel for Defendants

Morris I. Esformes, Philip Esformes, Larkin Health Systems, Inc., Larkin Community Hospital, LLC, Larkin Health Systems, LLC, EMI Enterprises, Inc., Morphil Corp., Morr-Jack, Inc., Morsey, LC, A.D.M.E. Investment Corp., A.D.M.E. Investment Partners, Ltd., ALF Holdings, Inc., Courtyard Manor Retirement Living, Inc., Courtyard Manor Retirement Investors, Ltd., Courtyard Manor Retirement Living, LLC, Fair Havens Holding Co., LLC, Jene's Retirement Living, Inc., Jene's Retirement Investors, Ltd., Jene's Retirement Living, LLC, La Covadonga Retirement Living, Inc., La Covadonga Retirement Investors, Ltd., La Covadonga Retirement Living, LLC, North Miami Retirement Living, Inc., The Pointe Retirement Living, Inc., The Pointe Retirement Investors, Ltd., The Pointe Retirement Living, LLC, Rainbow Retirement Living, Inc., Rainbow Retirement Investors, Ltd., Rainbow Retirement Living, LLC, Williamsburg Retirement Living, Inc., Williamsburg Retirement Investors, Ltd., Williamsburg Retirement Living, LLC, Maven Retirement Investors, Ltd., Maven Retirement Living, Inc., State Parkway Associates, Ltd., and Ridgeway Associates Ltd.

DATED: 11/16/06

BY:

  
\_\_\_\_\_  
CLAUDIA PACE

DATED: 11/16/06

BY:

  
\_\_\_\_\_

DEVINE, GOODMAN, PALLOT & WELLS  
GUY A. RASCO  
Counsel for Claudia Pace

