

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively, the “United States”), BW Homecare Holdings L.L.C., JHH/CIMA Holdings, Inc., CIMA Healthcare Management, Inc., CIMA Hospice of Texarkana, L.L.C., CIMA Hospice of East Texas, L.L.C., and CIMA Hospice of El Paso, L.P. (collectively “Elara Caring”), and Aneko Jackson (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Elara Caring, headquartered in Dallas, Texas, owns and operates subsidiaries providing hospice services in ten states including Texas. Prior to July 2018, JHH/CIMA Holdings, Inc. owned and operated the subsidiaries providing hospice services in Texas.

B. On April 7, 2020, Aneko Jackson filed a *qui tam* action in the United States District Court for the Western District of Texas captioned *United States ex rel. Jackson v. CIMA Healthcare Management, Inc., et al.*, Case No. 1:20-cv-00368, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

C. The United States contends that Elara Caring submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”).

D. The United States contends that it has certain civil claims against Elara Caring arising from:

(1) Elara Caring allegedly submitting, or causing the submission of, false claims to Medicare, for patients of the Elara Caring Texarkana, Texas location who did not meet the

eligibility requirements for the Medicare hospice benefit as defined by statute and regulation, under the provider name and number CIMA Hospice Of Texarkana, L.L.C, CCN 671759 / NPI 1922354648, and improperly retaining overpayments from Medicare for claims for such patients ineligible for the Medicare hospice benefit, for hospice care provided from January 1, 2014 to December 31, 2019, and

(2) Elara Caring allegedly submitting, or causing the submission of, false claims to Medicare, for two patients of the Elara Caring Texarkana, Texas location, under the provider name and number CIMA Hospice Of Texarkana, L.L.C., CCN 671759 / NPI 1922354648, for hospice care provided from January 1, 2020 to December 22, 2020; for one patient of the Elara Caring El Paso, Texas location, under the provider name and number CIMA Hospice Of El Paso, L.P., CCN 671556 / NPI 1548105648, for hospice care provided from August 17, 2018 to August 31, 2021; and for one patient of the Elara Caring Sherman, Texas location, under the provider name and number CIMA Hospice of East Texas, L.L.C., CCN 671744 / NPI 1962776955, for hospice care provided from August 20, 2015 to February 2, 2018, and improperly retaining overpayments from Medicare for claims for such patients ineligible for the Medicare hospice benefit (a list of these four patients is attached as Exhibit A¹). That conduct is referred to below as the “Covered Conduct.”

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

¹ Pursuant to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, Exhibit A only uses the first and last initial to identify the four hospice patients referred to in Recital D(2). The United States has separately identified these patients for Elara Caring by their full names.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement.

G. Relator claims entitlement under 31 U.S.C. § 3730(d) to recover Relator's reasonable expenses, attorneys' fees and costs. Contemporaneous with the execution of this Agreement, Elara Caring, Relator, and Relator's counsel will be entering into separate agreement to resolve such claims.

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

TERMS AND CONDITIONS

1. Elara Caring shall pay to the United States four million, two hundred thousand dollars (\$4,200,000) ("Settlement Amount"), of which \$2,100,000 is restitution, plus interest on the Settlement Amount at a rate of 4.125%, to accrue per annum from February 27, 2024 through the date of payment, no later than five (5) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$672,000.00 plus accrued interest to Relator by electronic funds transfer ("Relator's Share").

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, the United States releases Elara Caring together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any civil or

administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 5 below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Elara Caring from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. Notwithstanding the releases given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

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

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

8. Elara Caring fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Elara Caring has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

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

10. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, fully and finally releases Elara Caring, and its officers, agents, and employees, from any liability to Relator has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Civil Action and the Relator's investigation and prosecution thereof arising from the filing of the Civil Action, including attorneys' fees, costs, and expenses of every kind and however denominated.

11. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Elara Caring agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

12. Elara Caring agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Elara Caring, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Elara Caring's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Elara Caring makes to the United States pursuant to this Agreement and any payments that Elara Caring may make to Relator, including costs and attorneys' fees.

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

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Elara Caring, and Elara Caring shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Elara Caring or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Elara Caring further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the United States, or any State Medicaid program,

including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Elara Caring or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Elara Caring agrees that the United States, at a minimum, shall be entitled to recoup from Elara Caring any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Elara Caring or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Elara Caring or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Elara Caring's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

13. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 14 (waiver for beneficiaries paragraph), below.

14. Elara Caring agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents,

sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

15. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). The Civil Action shall be dismissed with prejudice as to the Relator.

16. Except as otherwise provided in separate agreement between Relator and Elara Caring referenced in Paragraph G, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

18. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Western District of Texas. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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


22. This Agreement is binding on Elara Caring's successors, transferees, heirs, and assigns.

23. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: April 25, 2024 BY: 
MARTHA N. GLOVER
KRISTEN M. MURPHY
WILLIAM E. OLSON
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ BY: _____
THOMAS A. PARNHAM, JR.
Assistant United States Attorney
Western District of Texas

DATED: _____ BY: _____
SUSAN E. GILLIN
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

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THE UNITED STATES OF AMERICA


DATED: _____

BY: _____
MARTHA N. GLOVER
KRISTEN M. MURPHY
WILLIAM E. OLSON
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY:  Digitally signed by THOMAS PARNHAM
Date: 2024.04.23 16:04:00 -05'00'
THOMAS A. PARNHAM, JR.
Assistant United States Attorney
Western District of Texas

DATED: _____

BY:  Digitally signed by SUSAN GILLIN
Date: 2024.04.19 17:58:00 -04'00'
SUSAN E. GILLIN
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

**BW HOMECARE HOLDINGS L.L.C., JHH/CIMA HOLDINGS, INC.,
CIMA HEALTHCARE MANAGEMENT, INC., CIMA HOSPICE OF TEXARKANA,
L.L.C., CIMA HOSPICE OF EAST TEXAS, L.L.C.,
AND CIMA HOSPICE OF EL PASO, L.P. - DEFENDANTS**

DATED: _____

BY: _____

CHRIS CORRIGAN
General Counsel, for and on behalf:
BW Homecare Holdings L.L.C., JHH/CIMA
Holdings, Inc., CIMA Healthcare Management, Inc., CIMA
Hospice of Texarkana, L.L.C., CIMA Hospice of East
Texas, L.L.C., and CIMA Hospice of El Paso, L.P.

DATED: _____

BY: _____

KATHLEEN MCDERMOTT
Morgan, Lewis & Bockius LLP
Counsel for BW Homecare Holdings L.L.C., JHH/CIMA
Holdings, Inc., CIMA Healthcare Management, Inc., CIMA
Hospice of Texarkana, L.L.C., CIMA Hospice of East
Texas, L.L.C., and CIMA Hospice of El Paso, L.P.

ANEKO JACKSON - RELATOR

DATED: 18/04/24

BY: *Aneko Jackson*
Aneko Jackson (Apr 18, 2024 10:10 CDT)
ANEKO JACKSON

DATED: _____

BY: _____

STEVE SUMNER
JUSTIN SUMNER
AMANDA BRIDSON
Sumner Schick LLP
Counsel for Aneko Jackson

**BW HOMECARE HOLDINGS L.L.C., JHH/CIMA HOLDINGS, INC.,
CIMA HEALTHCARE MANAGEMENT, INC., CIMA HOSPICE OF TEXARKANA,
L.L.C., CIMA HOSPICE OF EAST TEXAS, L.L.C.,
AND CIMA HOSPICE OF EL PASO, L.P. - DEFENDANTS**

DATED: _____

BY: _____

CHRIS CORRIGAN
General Counsel, for and on behalf:
BW Homecare Holdings L.L.C., JHH/CIMA
Holdings, Inc., CIMA Healthcare Management, Inc., CIMA
Hospice of Texarkana, L.L.C., CIMA Hospice of East
Texas, L.L.C., and CIMA Hospice of El Paso, L.P.

DATED: _____

BY: _____

KATHLEEN MCDERMOTT
Morgan, Lewis & Bockius LLP
Counsel for BW Homecare Holdings L.L.C., JHH/CIMA
Holdings, Inc., CIMA Healthcare Management, Inc., CIMA
Hospice of Texarkana, L.L.C., CIMA Hospice of East
Texas, L.L.C., and CIMA Hospice of El Paso, L.P.

ANEKO JACKSON - RELATOR

DATED: _____

BY: _____


ANEKO JACKSON


DATED: 24/04/18

BY: *Justin Sumner*

STEVE SUMNER
JUSTIN SUMNER
AMANDA BRIDSON
Sumner Schick LLP
Counsel for Aneko Jackson

**BW HOMECARE HOLDINGS L.L.C., JHH/CIMA HOLDINGS, INC.,
CIMA HEALTHCARE MANAGEMENT, INC., CIMA HOSPICE OF TEXARKANA,
L.L.C., CIMA HOSPICE OF EAST TEXAS, L.L.C.,
AND CIMA HOSPICE OF EL PASO, L.P. - DEFENDANTS**

DATED: April 17, 2024 BY: 
CHRIS CORRIGAN
General Counsel, for and on behalf:
BW Homecare Holdings L.L.C., JHH/CIMA
Holdings, Inc., CIMA Healthcare Management, Inc., CIMA
Hospice of Texarkana, L.L.C., CIMA Hospice of East
Texas, L.L.C., and CIMA Hospice of El Paso, L.P.

DATED: 04-17-2024 BY: 
KATHLEEN MCDERMOTT
Morgan, Lewis & Bockius LLP
Counsel for BW Homecare Holdings L.L.C., JHH/CIMA
Holdings, Inc., CIMA Healthcare Management, Inc., CIMA
Hospice of Texarkana, L.L.C., CIMA Hospice of East
Texas, L.L.C., and CIMA Hospice of El Paso, L.P.

ANEKO JACKSON - RELATOR

DATED: _____ BY: _____
ANEKO JACKSON

DATED: _____ BY: _____
STEVE SUMNER
JUSTIN SUMNER
AMANDA BRIDSON
Sumner Schick LLP
Counsel for Aneko Jackson

**EXHIBIT A TO THE ELARA CARING
SETTLEMENT AGREEMENT**

**Patients Under CCN 671759 / NPI 1922354648
(January 1, 2020 to December 22, 2020 time-frame)**

D.S.
M.R.

Patient Under CCN 671556 / NPI 1548105648

E.G.

Patient Under CCN 671744 / NPI 1962776955

L.H.