

SETTLEMENT AGREEMENT

THE ARBA GROUP, INC., CF WATSONVILLE EAST, LLC, AND

CF WATSONVILLE WEST, LLC

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Department of Justice, United States Attorney’s Office for the Northern District of California, and the U.S. Department of Health and Human Services, Office of the Inspector General (“OIG-HHS”) (collectively the “United States”), the State of California, acting through the California Department of Justice, Office of the Attorney General, Bureau of Medi-Cal Fraud and Elder Abuse (“State of California”), and The ARBA Group Inc., (“ARBA Inc.”), CF Watsonville East, LLC, and CF Watsonville West, LLC, (the latter two jointly referred to as “the Nursing Facilities” and all three collectively as “the Defendants”) (hereafter all collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. ARBA Inc. is a California corporation based in Los Angeles, California. The Nursing Facilities are each limited liability companies based in Los Angeles, California. CF Watsonville, LLC operates Country Villa Watsonville East Nursing Center (renamed Watsonville Nursing Center in April 30, 2014), and CF Watsonville West, LLC operates Country Villa Watsonville West Nursing and Rehabilitation Center (renamed Watsonville Post-Acute Center in April 30, 2014). The Nursing Facilities are licensed to operate in the State of California, and each participates in the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.*, and in Medi-Cal, the California Medicaid Program, 42 U.S.C. § 1396 *et seq.*

B. On August 29, 2014, the United States filed a Complaint under the False Claims Act, 31 U.S.C. §§ 3729-3733 and common law in the United States District Court for the Northern District of California, captioned *United States v. The ARBA Group, CF Watsonville East, LLC, CF Watsonville West, LLC, Country Villa Health Service Corporation, DBA Country Villa Health Services*, 3:14-CV-03946 BLF (the “Civil Action”).

C. In the Civil Action, the United States contends that from February 2007 through 2012, Defendants submitted or caused to be submitted claims to the Medicare and Medi-Cal Programs for payment of materially substandard services for services rendered at the Nursing Facilities, as summarized in paragraphs 3, 4, 5, and 6 of the Complaint. That conduct, and all claims submitted to the Medicare and Medi-Cal programs during the specified period as a result of the materially substandard services rendered at the Nursing Facilities, is referred to below as the “Covered Conduct.”

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

In order to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation and administrative proceedings regarding the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Defendants shall pay the sum of \$1.42 million (“Settlement Amount”), as follows:

(a) Defendants jointly and severally agree to pay to the United States \$1,190,051.00 no later than five (5) days after the Effective Date of this Agreement, by electronic funds transfer pursuant to written instructions to be

provided to Defendants' counsel by the United States Attorney's Office for the Northern District of California.

(b) Defendants jointly and severally agree to pay the State of California \$229,949.00 no later than five (5) days after the Effective Date of this Agreement, by electronic funds transfer pursuant to written instructions to be provided to Defendants' counsel by the California Office of the Attorney General.

2. Subject to the exceptions in Paragraph 5 below (concerning excluded claims), upon receipt of full payment of the Settlement Amount, and subject to Paragraph 15, below (concerning bankruptcy proceedings), the United States releases Defendants, together with their officers, agents, servants, directors, parents, subsidiaries, and affiliates, and the 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; and the common law theories of payment by mistake, and unjust enrichment.

3. In consideration of the obligations of Defendants in this Agreement and the Corporate Integrity Agreement ("CIA"), entered into between OIG-HHS and the Nursing Facilities, and conditioned upon Defendants' full payment of the Settlement Amount, OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the Nursing Facilities under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(6)(b) (permissive exclusion for services of a quality which fails to

meet professionally recognized standards of care) and § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 5 below (concerning excluded claims), and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the Nursing Facilities from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5 below.

4. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Defendants set forth in this Agreement, and conditioned upon Defendants' payment in full of the Settlement Amount, the State of California agrees to release Defendants, together with their officers, agents, servants, directors, parents, subsidiaries, and affiliates, and the successors and assigns of any of them, from any civil or administrative monetary cause of action, under the California False Claims Act, Cal. Gov. Code §§ 12650-12654, or common law theories of payment by mistake, or unjust enrichment, relating to any claims submitted or caused to be submitted to the California Medi-Cal program as a result of the Covered Conduct.

5. Notwithstanding the releases given in Paragraphs 2 to 4 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State of California are specifically reserved and are not released:

- (a) Any liability arising under Title 26, U.S. Code (Internal Revenue Code) or under California State revenue codes;

- (b) Any criminal liability;
- (c) Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- (d) Any liability to the United States (or its agencies) or to the State of California for any conduct other than the Covered Conduct;
- (e) Any liability based upon obligations created by this Agreement;
- (f) Any civil or administrative liability that any person or entity, including any released entity, has or may have to the State of California or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in paragraph 4 above, including but not limited to claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (g) Any state administrative liability, including mandatory suspensions from the State of California's Medi-Cal program; and
- (h) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Defendants waive and shall not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other

provision of this Agreement constitutes an agreement by either the Defendants or the United States concerning their characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code. Nothing in this Agreement constitutes an agreement by the State of California concerning the characterization of the amounts paid hereunder for purposes of California's revenue code.

7. Defendants fully and finally release the United States and State of California, and each of the United States' and California's agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States, the State of California, and the United States' and California's agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' or California's investigation and prosecution thereof.

8. On or about March 18, 2015, Defendants provided sworn financial disclosure statements ("Financial Statements") to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Defendants warrant that the Financial Statements are complete, accurate, and current. If the United States learns of assets in which the Defendants had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any nondisclosure or misrepresentation by Defendants on, or in connection with the Financial Statements, and if such nondisclosure or misrepresentation increases the estimated unrestricted net assets set forth in the Financial Statements by more than \$142,000 (or 10% of the Settlement Amount) or more,

the United States may at its option pursue relief under this Paragraph as follows: (a) rescind this Agreement and file suit, or reinstate suit, based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of unrestricted net assets of Defendants previously undisclosed.

Defendants agree not to contest any collection action undertaken by the United States pursuant to this provision, and shall immediately pay to the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

9. In the event that the United States, pursuant to Paragraph 8 above (concerning disclosure of assets), opts to rescind this Agreement, Defendants agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 90 calendar days of written notification to the Defendants that this Agreement has been rescinded; and (b) relate to the Covered Conduct, except to the extent these defenses were available on August 29, 2014, the date on which the United States' Complaint was filed in the Civil Action.

10. 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 or Medi-Cal contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier or any state payer), related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare or Medi-Cal contractor or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

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11. Defendants agree to the following:

(a) Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; in the Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations, 45 C.F.R. Part 74, OMB Circular A-122-Cost Principles for Non-Profit Organizations; in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and in the regulations and official program directives promulgated thereunder) incurred by, or on behalf of, Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

(i) The matters covered by this Agreement;

(ii) The United States' audits and civil investigation of the matters covered by this Agreement;

(iii) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audits and civil investigation in connection with the matters covered by this Agreement (including attorney's fees);

(iv) The negotiation and performance of this Agreement;

(v) The payment Defendants make to the United States pursuant to this Agreement;

(vi) The negotiation of and obligations undertaken pursuant to the CIA to:

(1) Retain an independent monitor to perform annual reviews as described in Section III of the CIA; and

(2) Prepare and submit reports to the OIG-HHS; are unallowable costs for government contracting purposes and under the Medicare and Medicaid Programs, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in paragraph 11.(a)(vi) above, that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Defendants.

(b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Defendants or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or Federal Employee Health Benefit (“FEHBP”) Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or from 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 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. Defendants agree that the United States and the State of California, at a minimum, shall 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 respectively to the United States pursuant to the direction of the Department of Justice and/or the affected agencies, and to the State of California pursuant to the direction of the California Department of Justice. The United States and California reserve the right to disagree with any calculations submitted by Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendants or any of their 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 and the State of California to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

12. This Agreement is intended to be for the benefit of the Parties only (including Defendants' officers, agents, servants, directors, parents, subsidiaries, and

affiliates, and the successors and assigns of any of them). The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 13 (waiver for beneficiaries paragraph), below.

13. Defendants agree that they waive and shall not seek payment for any of the claims covered by this Agreement from health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

14. Defendants warrant that they have reviewed their financial situation and that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall not become insolvent following payment to the United States and to the State of California of the Settlement Amount. Nothing in this agreement, however, is intended to require specific portions of the Settlement Amount to be paid by any specific Defendant. 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 to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Defendants were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

15. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Defendants commence, 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 Defendants' debts, or seeking to adjudicate Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendants or for all or any substantial part of Defendants' assets, Defendants agree as follows:

(a) Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Defendants shall 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; (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 or California; 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.

(b) If Defendants' 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, the United States, at its sole option, may rescind the covenant not to sue and/or releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the covenant not to sue and/or releases provided in Paragraphs 2, 3 and 4 above. Defendants agree

that (i) any such claims, actions, or proceedings brought by the United States are not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Defendants shall not argue or otherwise contend that the United States’ claims, actions, or proceedings are subject to an automatic stay; (ii) Defendants shall 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 that are brought by the United States within 91 calendar days of written notification to Defendants that the covenant not to sue and/or releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on August 29, 2014, the date in which the Complaint was filed in the Civil Action; and (iii) the United States has a valid claim against Defendants jointly and severally in the amount of \$1.42 million, and the United States may pursue its claims in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

(c) Defendants acknowledge that their agreement in this Paragraph is provided in exchange for valuable consideration provided in this Agreement.

16. Upon receipt of the Settlement Amount described in Paragraph 1 above, the United States shall promptly sign and file a Dismissal of the Civil Action with prejudice as to Defendants pursuant to Rule 41(a)(1).

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

19. 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 Northern District of California. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

20. This Agreement constitutes the complete agreement between the United States, the State of California, and the Defendants. This Agreement may not be amended except by written consent of the Parties.

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

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

23. This Agreement is binding on Defendants' 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 of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

MELINDA HAAG
United States Attorney

DATED: _____

BY: _____
GIOCONDA R. MOLINARI
Assistant United States Attorney

DATED: _____

BY: _____
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
United States Department of Health and Human
Services, Office of Counsel to the Inspector
General

STATE OF CALIFORNIA

KAMALA HARRIS
Attorney General of the State of California

DATED: _____

BY: _____
EMMANUEL R. SALAZAR
Deputy Attorney General
Bureau of Medi-Cal Fraud & Elder Abuse
Office of the Attorney General
California Department of Justice

DEFENDANTS

DATED: _____

BY: _____
The ARBA Group, JACOB WINTNER, Secretary

DATED: _____

BY: _____
CF Watsonville East, LLC, JACOB WINTNER,
Manager

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DATED: _____

BY: _____
CF Watsonville West, LLC, JACOB WINTNER,
Manager and Secretary

DATED: _____

BY: _____
CAROLINE H. MANKEY
SEDGWICK, LLP
Attorneys for CF Watsonville East, LLC,
CF Watsonville West, LLC, and The ARBA Group

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