

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”) of the Department of Health and Human Services (“HHS”) (collectively, the “United States”), Family Medical Specialty Clinic, PLLC (“FMSC”), Melecio Abordo, M.D. (“Dr. Abordo”), June Abadilla, M.D. (“Dr. Abadilla”), (collectively, “Defendants”), and Jasjit Walia, M.D. and Preet Randhawa, M.D. (“Relators”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

- A. FMSC is a Kentucky corporation that provides, among other things, cardiology services to beneficiaries of federal health care programs.
- B. Dr. Abordo is a cardiologist who works at FMSC.
- C. Dr. Abadilla is the sole member of FMSC and Dr. Abordo’s wife.
- D. On August 27, 2021, Relators filed a *qui tam* action in the United States District Court for the Western District of Kentucky captioned United States ex rel. Walia v. [SEALED], Case No. SEALED, and filed the Second Amended Complaint on November 12, 2021, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). In their Second Amended Complaint, Relators name Dr. Abordo as a defendant.
- E. The United States contends that Defendants 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”).
- F. The United States contends that it has certain civil claims against Defendants arising from the overbilling of radiopharmaceuticals used in cardiac stress tests. Specifically, in Medicare Part A and B MAC Jurisdiction 15 (J15), which covers Kentucky, healthcare providers

are required to bill Medicare for diagnostic radiopharmaceuticals, including sestamibi and tetrofosmin, based on their acquisition cost; however, during the period between May 8, 2018, and November 26, 2019, Defendants submitted or caused to be submitted claims to Medicare that sought reimbursement for radiopharmaceuticals above Defendants' actual acquisition cost resulting in excess payments by Medicare. That conduct is referred to below as the "Covered Conduct."

G. 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.

H. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators' reasonable expenses, attorneys' fees, and costs.

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. Defendants shall, jointly and severally, pay to the United States Four Hundred Nine Thousand Five Hundred Ninety-Four Dollars (\$409,594) ("Settlement Amount"), of which \$204,797, is restitution, no later than 30 business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Western District of Kentucky.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$71,678.95 to Relators by electronic funds transfer ("Relators' Share") pursuant to wiring instructions to be provided by Relators' counsel.

3. Within 7 business days after the Effective Date of this Agreement, Defendants shall pay to Relators \$40,000 by electronic funds transfer pursuant to wiring instructions to be

provided by Relators' counsel as full and complete payment of Relators' attorneys' fees, costs, and expenses pursuant to 31 U.S.C. § 3730(d).

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States releases Defendants 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.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Defendants from any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the release given in Paragraph 4 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 except Dr. Abordo and Dr. Abadilla;
- 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.

7. Relators and their 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 Relators' receipt of the Relators' Share, Relators and their 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.

8. Conditioned on Relators' receipt of the payments described in paragraph 3 above, Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release Defendants, and any officers, agents, and employees, from any liability to Relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

9. Defendants waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the 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.

10. Defendants fully and finally release the United States, its 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, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. Defendants fully and finally release Relators, their attorneys, and their respective heirs, successors, assigns and agents, for all time and to the fullest extent allowed by law, 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 Relators related to the Covered Conduct or the investigation and prosecution of the Civil Action.

12. 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 Defendants agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

13. 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; 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 Defendants, their 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) Defendants' 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;
- (5) the payment Defendants make to the United States pursuant to this Agreement,

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 in nonreimbursable cost centers 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 its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or 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 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 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, 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 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 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 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.

14. 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 15 (waiver for beneficiaries paragraph), below.

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

16. Upon receipt of the payments described in Paragraphs 1 and 3 above, the United States and Relators shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the claims against Dr. Abordo pursuant to Rule 41(a)(1).

17. Except as set forth in paragraph 3, 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 venue for any dispute relating to this Agreement is the United States District Court for the Western District of Kentucky. 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 Parties. 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 any party's 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: _____

BY: _____
Lyle Gruby
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 2-13-2023

BY:  _____
Matt Weyand
Benjamin S. Schecter
Assistant United States Attorneys
United States Attorney's Office for the Western District of
Kentucky

DATED: 02/07/23

BY: Lisa M. Re

Lisa M. Re

Assistant Inspector General for Legal Affairs

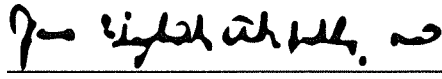
Office of Counsel to the Inspector General

Office of Inspector General

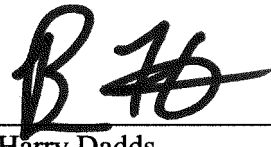
United States Department of Health and Human Services

FAMILY MEDICAL SPECIALTY CLINIC, PLLC

DATED: 02-05-2023

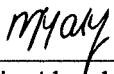
BY: 
June Abadilla, M.D.

DATED: 2/8/23


BY: 
Harry Dadds
Benjamin Fiechter
Counsel for Family Medical Specialty Clinic, PLLC

MELECIO ABORDO, M.D.

DATED: 02-05-2023

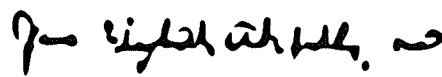
BY: 
Melecio Abordo, M.D.

DATED: 2/8/23

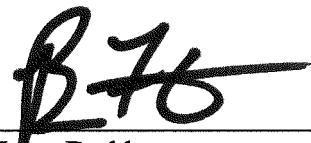
BY: 
Harry Dadds
Benjamin Fiechter
Counsel for Dr. Abordo

JUNE ABADILLA


DATED: 02-05-2023


BY: 
June Abadilla, M.D.

DATED: 2/8/23

BY: 
Harry Dadds
Benjamin Fiechter
Counsel for Dr. Abadilla

JASJIT WALIA AND PREET RANDHAWA

DATED: _____ BY:  _____
Jasjit Walia, M.D. Relator

DATED: _____ BY:  _____
Preet Randhawa, M.D. Relator

DATED: _____ BY: _____
Henry F. Furst
Co-counsel for Relators

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Daniel R. Miller
Jonathan Z. DeSantis
Co-counsel for Relators

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Steven D. Downey
Co-counsel for Relators

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Preet Randhawa, M.D. Relator

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Preet Randhawa, M.D. Relator

DATED: _____ BY: _____
Henry F. Furst
Co-counsel for Relators

DATED: _____ BY: _____
Daniel R. Miller
Jonathan Z. DeSantis
Co-counsel for Relators

DATED Feb 5, 2023 BY: Steve Downey
Steven D. Downey
Co-counsel for Relators