

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex  
rel. ISABEL AYERS,

Plaintiff,

v.

AMITAN HEALTH SERVICES OF DADE  
COUNTY, INC., a Florida corpora-  
tion, RENE CORVO, RAMON  
DOMINGUEZ, JESUS GARCIA, RAMON  
HERNANDEZ, RED CROSS HOME CARE,  
INC., a Florida corporation,  
X-TENDED CARE, INC., a Florida  
corporation, EJUSEBIO HUERTA,  
JORGE PEREZ FRANCO, JOSE MARTI  
HOME HEALTH, INC., a Florida  
corporation, RAUL CAMACHO, and  
SANDRA CORVO,

Defendants.

CASE NO. 97-0894-CIV-MOORE

Magistrate Judge Brown

SETTLEMENT AGREEMENT BETWEEN  
UNITED STATES AND DEFENDANT  
JESUS GARCIA

This settlement agreement ("Agreement") is entered into by and among the United States of America ("United States") acting through the United States Attorney for the Southern District of Florida ("USAO"), on behalf of the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("DHHS"); and defendant Jesus Garcia. Collectively, all of the above will be referred to herein as "the Parties".

RECITALS

1. The United States has claims against Defendants, predicated upon the False Claims Act, as amended, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-

7a; and the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-12 as well as under common law, for improperly filed claims for reimbursement for the costs of home health services under Title XVIII (the Medicare Part A program). The United States also has administrative claims against the Defendants under the provisions for exclusion from the Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b).

2. The OIG, Federal Bureau of Investigation ("FBI"), and Palmetto Government Benefits Administrators ("Palmetto") have conducted investigations of claims for reimbursement of the cost of home health services submitted or caused to be submitted by Defendants. On the basis of these investigations the United States contends that Ramon Dominguez was one of two owners of Amitan Health Services of Dade County ("Amitan"). From August 1995 through September 1997, claims for reimbursement were submitted by Amitan for home health services which, under Medicare law, should not have been submitted. The United States contends that these claims were for home health visits which either were not provided or were provided to beneficiaries who were not qualified to receive home health services, and the claims were therefore false and fraudulent under the False Claims Act. X-Tended Care, Inc. ("X-Tended"), Jose Marti Home Health, Inc. ("Marti"), and Eusebio Huerta ("Huerta") provided documentation to Amitan to support these false claims. Additionally, cost reports submitted by Amitan to Medicare contained misrepresentations as to costs incurred and

transactions with undisclosed related parties. Ramon Hernandez and Jesus Garcia allowed their names to be used as owners, officers, and directors of Amitan in order to conceal the true owners, Ramon Dominguez and Rene Corvo. Further, funds received from Medicare by Amitan were subsequently transferred to Ramon Dominguez, Jesus Garcia, Ramon Hernandez, X-Tended Care, Inc., Eusebio Huerta, and Jose Marti Home Health, Inc. Defendants' conduct described in this paragraph is hereinafter referred to as the "Covered Conduct".

After investigating the Covered Conduct, the United States intervened and filed an amended complaint in United States of America ex rel. Isabel Avers v. Amitan Health Services of Dade County, Inc., Rene Corvo, Ramon Dominguez, Jesus Garcia, Ramon Hernandez, Red Cross Home Care, Inc., X-Tended Care, Inc., Eusebio Huerta, Jorge Perez Franco, and Jose Marti Home Health, Inc., Case No. 97-0894-Civ-Moore (hereinafter, "the Complaint"). The complaint was later amended to add Sandra Corvo and Raul Camacho as defendants to the action.

Garcia contends that there was no intentional or knowing conduct on his part concerning the Covered Conduct.

#### Terms of Agreement

3. The Parties desire to settle, compromise and resolve issues and disputes between them based upon the above claims in order to avoid the uncertainty and expense of litigation.

4. The Parties agree that this Agreement does not constitute an admission by any person or entity, and shall not be

construed as an admission by any person or entity with respect to any issue of law or fact. The Parties further agree that this document cannot be used as evidence against any of these Defendants in any subsequent criminal trial.

5. In accordance with the mutual covenants and agreements herein, and with full authority to enter into this Agreement and be bound thereby, the Parties agree as follows:

A. Judgment

1) Defendant Jesus Garcia consents to the entry of Judgment in Case No. 97-0894-CIV-MOORE in the amount of \$87,233.15 against him.

2) Defendant Jesus Garcia understands that other judgments will be entered against other defendants in Case No. 97-0894-CIV-MOORE, including one in the amount of \$9,456,253.99 against Amitan Health Services of Dade County, Inc., and has no objection to the entry of such judgments.

3) These Judgments in Case No. 97-0894-CIV-MOORE shall accrue interest in accordance with 28 U.S.C. §1961.

B. Amount of Payment.

1) The full balance of the bank accounts restrained by the Preliminary Injunction in Case No. 97-0894-CIV-MOORE will be transferred to the United States. The accounts to be transferred to the United States pursuant to this Agreement are as follows:

Accounts of Amitan Health Services of Dade

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<sup>1</sup>The amount to be transferred is the full amount in the account on the date of transfer and may be higher than the amount indicated here.

Terrabank #12706302-06	\$ 63,653.20
Terrabank #12706302-07	8,708.91
<u>Accounts of Ramon Dominguez</u>	
Terrabank #12572551-68	\$
Terrabank #12572551-06	\$ 1,669.65
Terrabank #12572551-11	100.79
<u>Accounts of Ramon Hernandez</u>	
Terrabank #12702420-06	\$ 800.19
Terrabank #12665711-20	5,957.31
<u>Account of Eusebio Huerta</u>	
Terrabank #12715050-06	\$ 25.67
<u>Account of Jose Marti Home Health</u>	
Terrabank #12675865-06	\$ 42,267.38
<u>Account of American Home Health Services</u>	
Terrabank #12711322-06	\$ 16,123.79
<u>Accounts of Maylene C. Dominguez</u>	
Terrabank #12643580-06	\$ 427.62
Terrabank #12643580-20	3,954.30

2) Defendants agree that any Medicare payments currently being withheld from Amitan by Palmetto, as well as any additional monies which might result from any cost report audits or settlements, shall be released to the United States. Defendants hereby fully and finally relinquish any interest in or claim to these monies. 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. In addition, Defendants hereby agree not to seek or accept any reimbursement from Medicare or any other Federal health care program which Amitan has not already received by the effective date of this Agreement.

C. Financial Statements

1) Defendants have provided sworn complete financial disclosure statements to the United States, and the United States has relied on the representations therein in reaching this Agreement. Defendants warrant that the financial information they have provided to the United States is thorough, accurate, and complete. Defendants further warrant that they do not own or have any interest in any assets which have not been disclosed to the United States and that they have made no misrepresentations in or in connection with the financial information they have given or will provide. In the event that the United States discovers previously undisclosed assets totaling ten thousand dollars (\$10,000) or more in value, which existed at the time of execution of this Agreement, and in which Defendants had an interest, contingent or otherwise, the United States may at its option: (a) rescind this Agreement and reinstate its suit upon the underlying claims described in paragraph 2; or (b) let the Agreement stand and collect the amounts set forth in Paragraph 5(A) above plus one hundred percent (100%) of the value of the assets previously undisclosed. Defendants agree not to contest any collection action undertaken by the United States pursuant to this provision.

2) In the event that the United States opts, pursuant to subparagraph 1, to rescind this Agreement, Defendants expressly agree not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or other similar theories, to any civil or

administrative causes of action filed by the United States relating to the Covered Conduct except to the extent that these defenses were available on September 15, 1997.

6. 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 any of the Defendants) are any and all of the following:

- 1) Any civil, criminal or administrative claims 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 pursuant to 42 U.S.C. § 1320a-7(a);
- 4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- 5) Any claims based upon such obligations as are created by this Agreement;

7. Exclusion. Garcia agrees to be excluded under 42 U.S.C. § 1320a-7(b)(7) from participation in Medicare, Medicaid, and all other federal health care programs as defined in 42 U.S.C. § 1320a-7b(f), for a period of ten (10) years from the date of this agreement. Garcia understands that Amitan Health Services of Dade County, Inc. has been permanently excluded from participation in Medicare, Medicaid, and all other federal health care programs as defined in 42 U.S.C. § 1320a-7b(f), and has no objection to said exclusion. Such exclusion will have national

effect and will also apply to all other Federal procurement and non-procurement programs. Defendants waive any further notice of the exclusion. Defendants agree not to contest such exclusion either administratively or in any State or Federal court. In the event of a criminal conviction of any of these defendants, any mandatory exclusion imposed pursuant to 42 U.S.C. § 1320a-7(a) would be independent of the exclusion referenced in this paragraph. If any of these Defendants submits or causes the submission of claims while excluded, he or she is subject to the imposition of additional civil monetary penalties and assessments. Defendants further agree to hold the federal programs and all the federal programs' beneficiaries and/or sponsors harmless from any financial responsibility for services furnished to such beneficiaries and/or sponsors after October 19, 1998 and until such time as their provider status is restored. Defendants specifically waive their rights under any statute or regulation to payment from Medicare, Medicaid, TRICARE, VA or CPM during the subject exclusion. Upon completion of the exclusion period, Defendants may apply for reinstatement in accordance with 42 C.F.R. § 1001.3001.

8. Release by United States. Subject to the exceptions in Paragraph 6 above and the bankruptcy provisions set forth below in Paragraphs 12-13, within 120 calendar days after payment of the Judgments described in paragraph 5A, the United States shall release the Defendants from any civil or administrative monetary claim it may have against them 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 unjust enrichment, payment by mistake, breach of contract, and fraud for the Covered Conduct. The United States does not agree to waive any rights, obligations, or causes of action other than those specifically referred to in this Agreement. This release is applicable only to the Defendant who is a party to this Agreement, and is not applicable in any manner to any other person, partnership, corporation or other entity.

9. Waivers by the Defendants.

A. The Defendants agree not to contest further the amount due under this Agreement or any remedy consented to under this Agreement. The Defendants further agree to waive all procedural rights granted under the False Claims Act, the Civil Monetary Penalties statute and regulations, and DHHS Claims Collection regulations (45 C.F.R. Part 30) and comparable state laws including, but not limited to, notice, hearing and appeal with respect to the amount due.

B. 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 Settlement bars a remedy sought in such

criminal prosecution or administrative action. Defendants agree that this settlement is not punitive in purpose or effect. 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.

C. Defendants agree that they will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Defendants waive any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

10. Costs and attorneys fees. Each Party to the Agreement shall bear its own costs and attorneys fees.

11. Binding Agreement. This Agreement shall be binding on the heirs, administrators, executors, successors and transferees of Defendants.

12. Bankruptcy.

The Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (1) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendants, within the meaning of 11 U.S.C. Section 547(c)(1), and (2) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous

exchange.

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

a. Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. Section 547, 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. Section 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 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.

b. In the event that any of these Defendants' obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under 11 U.S.C. §547, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or

administrative claim, action or proceeding against Defendants for the claims that would otherwise be covered by the releases provided in Paragraph 8 above. If the United States chooses to do so, 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 Defendants will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) that 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, except to the extent such defenses were available on September 15, 1997; and (iii) the United States has a valid claim against Defendants in the amount of treble damages plus penalties and the United States may pursue its claim, inter alia, in the case, action or proceeding referenced in the first clause of this paragraph, as well as in any other case, action, or proceeding.

c. Defendants acknowledge that their agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. Defendants agree that all costs, (as defined in the

Federal Acquisition Regulations ("FAR") § 31.205-47 and in Titles XVIII and XLX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997) and 1396-1396v(1997), and the regulations promulgated thereunder) incurred by or on behalf of any of the Defendants in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) Defendants' investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees), (4) the negotiation of this Agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employee Health Benefits Program (FEHBP) (hereafter, "unallowable costs"). 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 any of the Defendants to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

15. Bargain between the Parties. This Agreement contains a complete description of the bargain between the parties. All material representations, understandings and promises of the parties are contained in this Agreement. Any modification must

be set forth in writing and signed by all parties. The Defendants represent that this Agreement is entered into with knowledge of the events described herein, and upon the advice of legal counsel. The Defendants further represent that this Agreement is voluntarily entered into in order to avoid litigation, without any degree of duress or compulsion.

16. Execution by the Parties. This Agreement shall become final and binding upon the date of the last signature of a party hereto or, in the event that the Relator objects to this agreement, upon the date of approval by the Court. This Agreement may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same Agreement. Each person who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so.

17. Jurisdiction of the District Court. The parties agree that the United States District Court for the Southern District of Florida shall retain jurisdiction in this case to enforce the terms of this Settlement Agreement.

Date: 8/21/99

Jesus Garcia  
JESUS GARCIA

Date: 8/21/99

Luis Fernandez  
Luis Fernandez, Esquire  
Counsel for Jesus Garcia


FOR THE UNITED STATES:

Date: \_\_\_\_\_

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Date: 10/6/99

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FOR THE UNITED STATES:

Date: 11/15/99

  
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