

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 of the Department of Health and Human Services (“HHS-OIG”), ABC1857, LLC, formerly known as Care One Management LLC (“Defendant”), and Margaret Gathman (“Relator”) (collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Defendant is a privately held company that provides management services, including financial back office services, to healthcare facilities (collectively referred to as the “Centers”). Defendant’s predecessor, Care One Management LLC, was a management company that provided similar services to senior care Centers including long term nursing care, assisted living facilities, and home healthcare agencies, including over 20 Centers in New Jersey.

B. On August 15, 2017, Relator filed a qui tam action in the United States District Court for the District of New Jersey captioned *United States ex rel. Margaret Gathman v. CareOne Management LLC, et al.*, Civil Action No. 17-6180 (SDW), pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleged, among other things, that Defendant, on behalf of certain Centers, falsely reported “bad debt” in cost reports to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”) in violation of 42 C.F.R. § 413.89 and other regulations.

C. The United States contends that Defendant, on behalf of certain Centers, submitted or caused to be submitted claims for payment to Medicare.

D. The United States contends that it has certain civil claims against Defendant arising from the submission of claims for payment to Medicare for reimbursement of Medicare

bad debt under 42 C.F.R. § 413.89 for the period January 1, 2012 to July 2, 2018; and that Defendant made false representations of compliance with applicable statutory and regulatory criteria, including those identified in 42 C.F.R. § 413.89, in connection with its claims for Medicare bad debt reimbursement. This conduct is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by Defendant nor a concession by the United States that its claims are not well founded. Defendant denies that it submitted or caused the submission of false claims or made false representations to Medicare regarding the reimbursement of bad debts.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s 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. Defendant shall pay to the United States seven-hundred fourteen thousand nine-hundred ninety-six dollars (\$714,996) (“Settlement Amount”), of which \$391,242 is restitution, and interest on the Settlement Amount at a rate of 0.75% from November 6, 2020 (“Interest”) within 14 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of New Jersey.

2. Conditioned upon the United States receiving the Settlement Amount from Defendant and as soon as feasible after receipt, the United States shall pay one-hundred forty-

three thousand dollars (\$143,000) to counsel for Relator by electronic funds transfer pursuant to instructions from her undersigned counsel.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Defendant's full payment of the Settlement Amount, the United States releases Defendant, together with its current and former divisions, affiliates, direct and indirect subsidiaries, predecessor and successor corporations, parent companies, owners, officers, directors, employees, shareholders and members, including, without limitation, the defendants in the Civil Action (collectively the "Released Parties"), 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. This release specifically covers claims, conduct, or transactions that occurred after July 2, 2018 to the extent such claims, conduct, or transactions relate to payments received or reimbursement claims from Medicare for years 2012 through and including July 2, 2018. This release also specifically covers claims, conduct, or transactions made in connection with Medicare Cost Reports submitted to the Centers for Medicare and Medicaid Services and during Medicare Cost Report reviews conducted by Medicare Administrative Contractors.

4. Subject to the exceptions in Paragraph 5 below, and conditioned upon Defendant's full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases the Released Parties, together with their current or former owners, officers, directors, employees, agents, shareholders, and attorneys, and the heirs, representatives, family members, successors and assigns of any of them, from any

claims for relief, actions, rights, causes of action, suits, debts, obligations, liabilities, demands, losses, damages, costs and expenses of any kind, whether known or unknown as of the Effective Date of this Agreement that Relator has, may have, could have asserted, or may assert in the future on her behalf or on behalf of the United States or any state or local government or sovereign or on behalf of any other person or entity, including but not limited to any claim relating in any way to the Covered Conduct, the allegations of the Complaint, , the filing of the Civil Action, the investigation and prosecution of this matter, or the negotiation of this Agreement, including all liability, claims, demands, actions or causes of action existing as of the Effective Date of this Agreement, fixed or contingent, in law or in equity, in contract or in tort, or under any federal or state statute, regulation, or common law, with the following two exceptions: Relator reserves and specifically does not release Released Parties from (a) any claims for reasonable expenses, attorneys' fees, and costs under 31 U.S.C. § 3730(d); and (b) the civil action currently pending in the Superior Court of New Jersey Appellate Division: *Margaret Gathman v. Care One Management, LLC et al.*, Docket No. A-002904-19T3/BER-L-5015-17.

5. Notwithstanding the releases given in paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims 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, 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; and
- f. Any liability of individuals.

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 payment described in Paragraph 2, 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. Defendant waives and shall not assert any defenses Defendant 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. Defendant fully and finally releases 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 Defendant has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, solely related to the Covered Conduct and the United States' investigation thereof.

9. Defendant fully and finally releases the Relator and her counsel from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendant has asserted, could have asserted, or may assert in the future against the Relator or her counsel, related to the claims in the Complaint of this Civil Action, including any fees or costs in connection with this Civil Action or the preparation and/or performance of this Agreement.

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 contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Defendant 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.

11. Defendant 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-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendant, 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 and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Defendant's 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);

- (4) the negotiation and performance of this Agreement; and
- (5) the payment Defendant makes to the United States pursuant to this Agreement and any payments that Defendant may make to Relator related to this Agreement, including costs and attorneys' fees under 31 U.S.C. § 3730(d);

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

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Defendant, and Defendant 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 Defendant or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendant 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 10 a.) 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 Defendant 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. Defendant agrees that the United States, at a minimum, shall be entitled to recoup from Defendant 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 Defendant or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph 10 a.) on Defendant 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 Defendant's 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. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraphs 3, 4, 6, 9 and 13 (waiver for beneficiaries paragraph), below.

13. Defendant 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.

14. Upon receipt of the payment described in Paragraph 1, above, the United States and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41. The dismissal shall be with prejudice against Relator, except with respect to her claim for reasonable attorney's fees, expenses, and costs under 31 U.S.C. § 3730(d), and with prejudice as to the Covered Conduct against the United States. Such Stipulation shall also specify that the Court shall retain jurisdiction of the Civil Action for purposes of enforcing the terms of this Agreement, and, if it is not resolved, determining reasonable expenses, attorneys' fees, and costs pursuant to 31 U.S.C. § 3730(d)(2).

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

16. This Agreement is governed by the laws of the United States. The Parties consent to, and agree that, the exclusive jurisdiction and venue for (1) any dispute relating to this Agreement; and (2) the resolution of payment of Relator's reasonable expenses, attorney's fees and costs described in Paragraph 4 is the United States District Court for the District of New Jersey. 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.

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

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

19. Notwithstanding Relator's claim for reasonable attorney's fees, expenses, and costs under 31 U.S.C. § 3730(d), which Relator expressly reserves, each Party shall bear its own

legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

21. This Agreement is binding on Defendant's successors, transferees, heirs, and assigns.

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

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

24. 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: 2/11/2021

BY: 
DANIEL W. MEYLER
Assistant United States Attorney
United States Attorney's Office
District of New Jersey

APPROVED:



LEE M. CORTES, JR.
Chief, Health Care Fraud Unit
United States Attorney's Office
District of New Jersey

DATED: 2/10/2021

BY: 

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

ABC1857, LLC

DATED: 2/3/2021

BY: 

Thomas A. McKinney
SVP & Deputy General Counsel, ABC1857, LLC

DATED: 2/3/2021

BY: 

William H. Jordan
Jason D. Popp
Alston & Bird LLP
Counsel for ABC1857, LLC

MARGARET GATHMAN - RELATOR

DATED: 2/3/2021

BY: 
Margaret Gathman

DATED: _____

BY: _____
Charles J. Kocher
McOMBER McOMBER & LUBER, P.C.

DATED: _____

BY: _____
Matthew A. Luber
McOMBER McOMBER & LUBER, P.C.

DATED: _____

BY: _____
Simon B. Paris
SALTZ MONGELUZZI BENDESKY, P.C.

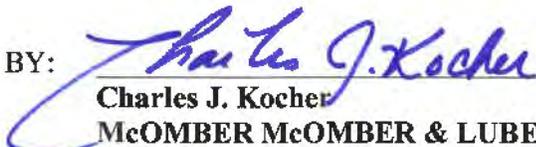
Counsel for **Relator Margaret Gathman**

MARGARET GATHMAN - RELATOR

DATED: _____

BY: _____
Margaret Gathman

DATED: 2-4-21

BY: 
Charles J. Kocher
McOMBER McOMBER & LUBER, P.C.

DATED: 2-4-21

BY: 
Matthew A. Luber
McOMBER McOMBER & LUBER, P.C.

DATED: _____

BY: _____
Simon B. Paris
SALTZ MONGELUZZI BENDESKY, P.C.

Counsel for Relator Margaret Gathman

MARGARET GATHMAN - RELATOR

DATED: _____

BY: _____
Margaret Gathman

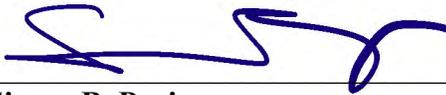
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Simon B. Paris
SALTZ MONGELUZZI BENDESKY, P.C.

Counsel for **Relator Margaret Gathman**