

CIVIL SETTLEMENT AGREEMENT

I. PARTIES

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”); FORBA Holdings, LLC, (“FORBA”); and John Haney, Angela Crawford, and Deborah McDaniel (collectively referred to as “the Parties”), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. FORBA provides (or has provided) business management services to dental clinics, as set forth in Exhibit A hereto, located in Alabama, Arizona, Colorado, Connecticut, the District of Columbia, Georgia, Idaho, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Nebraska, Nevada, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, and Virginia that provide services primarily to Medicaid-eligible patients (collectively, the “Centers”).

B. Deborah McDaniel (“McDaniel”) is an individual resident of Maryland. On December 21, 2007, McDaniel filed a qui tam action in the United States District Court for the District of Maryland captioned United States ex rel. McDaniel v. FORBA Holdings LLC, et al., No. 07-3416 (D. Md.) (hereinafter, “the Maryland Civil Action”).

C. Angela Crawford (“Crawford”) is an individual resident of Virginia. On June 12, 2008, Crawford filed a qui tam action in the United States District Court for the Western District of Virginia captioned United States of America and Commonwealth of Virginia ex rel. Angela Crawford v. Small Smiles of Roanoke LLC, et al., Case No. 7:08-cv-00370 (hereinafter “the Virginia Civil Action”).

D. John J. Haney (“Haney”) is an individual resident of South Carolina. On July 16, 2008, Haney filed a qui tam action in the United States District Court for District of South Carolina captioned John J. Haney o/b/o the United States of America v. Children’s Medicaid Dental of Columbia, LLC d/b/a ‘Small Smiles’, Case No. 3:08-CV-2562-CMC (hereinafter “the South Carolina Civil Action”). (The South Carolina Action, the Virginia Civil Action, and the Maryland Civil Action will collectively be known as “the Civil Actions.”) (The individuals listed in Paragraphs B, C, and D will collectively be referred to as “the Relators.”)

E. FORBA has entered into or will be entering into separate settlement agreements with the states listed in Exhibit B hereto (hereinafter referred to as the “Medicaid Participating States”) that will be receiving settlement funds from FORBA pursuant to Paragraph 1.c for the Covered Conduct described in Paragraph G (the “State Medicaid Settlement Agreements”).

F. The United States contends that FORBA caused to be submitted claims for services provided by the Centers for payment to the Medicaid Program (‘Medicaid’), 42 U.S.C. §§ 1396-1396v and State Children’s Health Insurance Program (‘SCHIP’).

G. The United States contends that it and the Medicaid Participating States (hereinafter collectively referred to as the “Government”) have certain civil claims against FORBA for engaging in the following conduct (hereinafter referred to as the “Covered Conduct”) in connection with services and items that the Centers provided to children who were Medicaid and SCHIP beneficiaries during the period from September 2006 through the Effective Date of this Agreement: (1) causing claims to be submitted by the Centers for reimbursement for performing pulpomies that were not medically necessary and/or were performed in a manner that did not meet professionally-recognized standards of care; (2) causing claims to be submitted by the Centers for reimbursement for placing crowns that were not medically necessary and/or were performed in a manner that did not meet

professionally-recognized standards of care; (3) causing claims to be submitted by the Centers for reimbursement for the administration of anesthesia (including, without limitation, nitrous oxide) that was not medically necessary, that was performed in a manner that did not meet professionally-recognized standards of care, and/or was administered by an unlicensed, non-certified, or otherwise unauthorized individual; (4) causing claims to be submitted by the Centers for reimbursement for extractions that were not medically necessary and/or were performed in a manner that did not meet professionally recognized standards of care; (5) causing the Centers to fail to obtain informed consent for certain dental procedures and services; (6) causing claims to be submitted by the Centers for reimbursement for fillings that were not medically necessary and/or were performed in a manner that did not meet professionally-recognized standards of care; (7) causing claims to be submitted by the Centers for reimbursement for sealants that were not medically necessary and/or were performed in a manner that did not meet professionally-recognized standards of care; (8) causing claims to be submitted by the Centers for reimbursement for radiographs (i.e., x-rays) that were not medically necessary, were taken in a manner that did not meet professionally-recognized standards of care, and/or were taken by an unlicensed, non-certified, or otherwise unauthorized individual; and (9) causing claims to be submitted by the Centers for reimbursement for behavior management techniques, including without limitation those techniques involving a papoose board, that were not medically necessary and/or were performed in a manner that did not meet professionally-recognized standards of care.

H. The United States also contends that it has certain administrative claims against FORBA for engaging in the Covered Conduct.

I. The United States and the Relators have reached an agreement with respect to the Relators' claims of entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement.

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

K. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. FORBA shall pay to the United States and the Medicaid Participating States, collectively, the sum of twenty-four million dollars (\$24,000,000), plus any interest that has accrued between June 15, 2009, and the Effective Date of this Agreement at a rate of 2.75% per annum (Settlement Amount). On the Effective Date of this Agreement, as defined in Paragraph 35 herein ("Effective Date"), this sum shall constitute a debt due and immediately owing to the United States and the Medicaid Participating States. FORBA shall discharge its debt to the United States and the Medicaid Participating States under the following terms and conditions:

a. FORBA shall pay to the United States the principal sum of \$14,285,644.75 (the "Federal Settlement Amount"). FORBA shall pay the Federal Settlement Amount, plus interest accrued thereon at the rate of 2.75% per annum, in accordance with the payment schedule attached hereto as Exhibit C ("Payment Schedule"). Within 10 days after the Effective Date of this Agreement, FORBA shall pay the United States the initial fixed payment in the amount of \$595,235.22 ("Initial Payment"), plus any interest that may have accrued thereon between June 15, 2009, and the Effective Date, and thereafter make principal payments with interest according to the schedule in Exhibit C.

b. All payments set forth in this Paragraph 1.a. shall be made to the United States by electronic funds transfer pursuant to written instructions provided by the Office of the United States Attorney for the District of Maryland. The entire principal

balance of the Federal Settlement Amount or any portion thereof, plus any interest accrued on the principal as of the date of any prepayment, may be prepaid without penalty.

c. FORBA shall pay to the Medicaid Participating States the sum of \$9,714,355.25 ('State Settlement Amount'). FORBA shall pay the Medicaid State Settlement Amount, plus interest accrued thereon at the rate of 2.75% per annum, in accordance with the Payment Schedule found at Exhibit C. Within 10 days after the Effective Date of this Agreement, FORBA shall set aside \$404,764.78, plus any interest that may have accrued between June 15, 2009, and the Effective Date, into an interest-bearing account of its own choosing as agreed upon between FORBA and the National Association of Medicaid Fraud Control Units Settlement Team ('NAMFCU Team') and, upon reaching agreements with, and obtaining releases from, each of the Medicaid Participating States and upon receipt of written payment instructions from the NAMFCU Team, shall pay the State Settlement Amount plus any additional interest earned in the Deposit Account as directed by each settling Medicaid Participating State. FORBA shall thereafter make fixed pro rata payments according to the schedule in Exhibit C and as directed by each settling Medicaid Participating State. The entire principal balance of the Medicaid State Settlement Amount or any portion thereof, plus any interest accrued on the principal as of the date of any prepayment, may be prepaid without penalty.

d. FORBA shall pay attorney's fees to the Relators in the aggregate amount of \$182,183.52. This amount shall be paid as an electronic funds transfer to the Relators' attorneys (to be allocated in accordance with their instructions) no later than seven (7) business days after the stipulations of dismissal are filed as set forth in Paragraph 23.

e. Contingent upon the United States receiving the Federal Settlement Amount from FORBA, the United States agrees to pay the Relators the following amounts as their shares of the proceeds pursuant to 31 U.S.C. § 3730(d)(the 'Relators' Shares').

McDaniel: \$2,039,979

Crawford: \$51,392

Haney: \$314,330

The United States will pay the Relators their pro rata share of each payment, in addition to the pro rata share of the actual accrued interest, that FORBA pays the United States under the Payment Schedule set forth in Exhibit D. The United States will pay the Relators their pro rata shares within 21 days of the United States' receipt of each payment from FORBA. The Relators expressly understand and agree that the United States is only liable to the Relators for funds actually received or collected by the United States.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims), below, in consideration of the obligations of FORBA in this Agreement, and subject to Paragraph 19, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to grant a temporary covenant not to sue FORBA, its parent (Small Smiles Holding Company, LLC), its current and former direct and indirect subsidiaries (EEHC, Inc., FORBA Services, Inc., Sanus Services, Inc., FORBA NY, LLC, and Sanus NY, LLC), the Centers, and the successors and assigns of any of them, and all current officers and directors of FORBA, and its parent or direct and indirect subsidiaries (collectively, the "FORBA Released Parties"), for any civil or administrative monetary claims the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-12; any statutory provision creating causes of action for civil damages or penalties for which the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, Section 0.45(d); or the common law theories of payment by

mistake, unjust enrichment, conversion, disgorgement, restitution, recoupment, constructive trust, misrepresentation, and fraud ("Temporary Covenant Not to Sue"). Conditioned upon full payment by FORBA of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to retract the Temporary Covenant Not to Sue and agrees to release the FORBA Released Parties for any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-12; any statutory provision creating causes of action for civil damages or penalties for which the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, Section 0.45(d); or the common law theories of payment by mistake, unjust enrichment, conversion, disgorgement, restitution, recoupment, constructive trust, misrepresentation, and fraud. Other than as expressly referred to herein, no individuals are released by this Agreement, nor are any of the entities listed in Exhibit E hereto.

3. Relators agree to the following:

a. Subject to the exceptions in Paragraph 3c (concerning Relator Crawford) and Paragraph 5 (concerning excluded claims), below, in consideration of the obligations of FORBA in this Agreement, conditioned upon FORBA's full payment of the Settlement Amount, and the amounts described in paragraph 1(d), and subject to Paragraph 19, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), Relators, for themselves and for their respective heirs, successors, attorneys, agents, and assigns, agree to release the FORBA Released Parties and each of their current and former officers, agents and employees from all causes of action, whether known or unknown as of the date of this Agreement, that Relators have or may have as of the date of this Agreement against any of

the FORBA Released Parties or any of their current and former officers, agents or employees for any violation of any federal, state or local law, contract, duty, standard of care, right, or other source of obligation that Relators may have, or may assert, including but not limited to all causes of action related to any civil monetary claims the United States or any of the Relators have or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33, state false claims acts, common law, any other statute or doctrine creating civil causes of action for relief for the Covered Conduct, any liability to Relators arising from the filing of the Civil Actions, or any liability under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs, other than causes of action arising under this Agreement.

b. Subject to Paragraphs 3(c), 19 and 20, Relators further agree that they will not pursue the Civil Actions or any related actions, pending the fulfillment by FORBA of its obligations under the Agreement.

c. Relator Crawford's release in 3(a) and agreement in 3(b) do not apply to the following Virginia Civil Action Defendants: Latavias Ellington, Leonisha Thomas, Clint McQueen, and Peggy Lovecchio.

4. In consideration of the obligations of FORBA in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and FORBA, conditioned upon FORBA's full payment of the Settlement Amount, and subject to Paragraph 19, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the 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 FORBA under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), or 42 U.S.C. § 1320a-7(b)(6)(B) (permissive

exclusion for furnishing or causing to be furnished items or services to patients substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care) for the Covered Conduct, except as reserved in Paragraph 5 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude FORBA 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. OIG-HHS expressly reserves all rights to institute, direct, or maintain any administrative action seeking exclusion against the Centers and/or FORBA's officers, directors, and employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) or 42 U.S.C. §§ 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion). Notwithstanding the foregoing, in the event of Default as defined in Paragraph 19, below, OIG-HHS may exclude FORBA from participating in all Federal health care programs until FORBA pays the Settlement Amount and reasonable costs as set forth in Paragraph 1, above. OIG-HHS will provide written notice of any such exclusion to FORBA. FORBA waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion FORBA wishes to apply for reinstatement, FORBA must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-3005. FORBA will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

5. 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 FORBA and Relators) are the following claims of the United States:

- a. Any civil, criminal, or administrative 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 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 such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- h. Any liability for failure to deliver goods or services due; or
- i. Except as expressly provided for in Paragraph 2, any liability of individuals, including employees of the Centers.

6. Relators and their respective heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and 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), and expressly waive the opportunity for a hearing on any objection to this Agreement pursuant to 31 U.S.C. § 3730(c)(2)(B).

7. Upon receipt of their pro rata share of the Initial Payment, the Relators and their respective heirs, successors, agents, and assigns, fully and finally release, waive, and forever discharge the United States, its agencies, employees, servants, and agents from any claims arising from or relating to 31 U.S.C. § 3730 from any claims arising from the filing of the Civil Actions, and from any other claims for a share of the Federal Settlement Amount, other than claims to enforce the provisions of this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the respective Relators arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

8. Conditioned upon the Relators' releases contained in Paragraph 3, FORBA fully and finally releases the Relators, and each of their respective attorneys, agents and employees, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that FORBA has or may have as of the date of this Agreement against the Relators or their attorneys, agents or employees related to the Covered Conduct, the Civil Claims and the Relator's investigation and prosecution thereof.

9. FORBA has provided various financial materials to the United States including certain audited financial statements ("Financial Statements"). The United States has relied on the completeness and reliability of those financial materials in reaching this Agreement. FORBA warrants that the Financial Statements are complete, accurate, and were prepared in accordance with Generally Accepted Accounting Principles (GAAP). If the United States learns of any asset(s) in which FORBA 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 misrepresentation by FORBA on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth of FORBA set forth in the Financial Statements by 1.2 million dollars (\$1,200,000.00) or more, the United

States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct; or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of FORBA previously undisclosed. FORBA agrees not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

10. In the event that the United States, pursuant to Paragraph 9 (concerning disclosure of assets), above, opts to rescind this Agreement, FORBA agrees 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 ninety (90) calendar days of written notification to FORBA that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

11. FORBA waives and shall not assert any defenses FORBA 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 the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. FORBA fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that FORBA has asserted, could have asserted, or may assert

in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

13. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicaid carrier or intermediary or any state payer, related to the Covered Conduct; and FORBA agrees not to cause the Centers to resubmit to any Medicaid carrier or intermediary or any state payer any previously-denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims. Nothing in this Paragraph 13 shall restrict FORBA's or the Centers' right to contest any denials, withholdings, or claims by any private payors or insurers, including those paid by the Medicaid Participating States' Medicaid Programs on a capitated basis.

14. FORBA agrees to the following:

a. Unallowable Costs Defined: that 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. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of FORBA, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "Unallowable Costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (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) FORBA'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 attorney's fees);

- (4) the negotiation and performance of this Agreement;
- (5) the payment FORBA makes to the United States pursuant to

this

Agreement and any payments that FORBA may make to Relators, including costs and attorney's fees; and

- (6) the negotiation of, and obligations undertaken pursuant to the

CIA to:

- (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA;

- (ii) retain an independent monitor to perform the monitoring functions described in Section III of the CIA; and

- (iii) prepare and submit reports to the OIG-HHS.

However, nothing in this Paragraph 14.a.(6) 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 FORBA. (All costs described or set forth in this Paragraph 14.a. are hereafter "Unallowable Costs.")

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

c. Treatment of Unallowable Costs Previously Submitted for Payment:

FORBA further agrees that within ninety (90) days of the Effective Date of this Agreement it shall identify to applicable Medicaid fiscal intermediaries, carriers, and/or contractors, and Medicaid and 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 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. FORBA agrees that the United States, at a minimum, shall be entitled to recoup from FORBA 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 FORBA or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on FORBA 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 FORBA's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. FORBA agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, FORBA shall encourage, and agrees not to impair, the cooperation of its agents, directors, officers, and employees, and shall use its best efforts to make available, and encourage the cooperation of former agents, directors, officers, and employees for interviews

and testimony, consistent with the rights and privileges of such individuals. FORBA agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by its counsel or other agent.

16. This Agreement is intended to be for the benefit of the Parties and the FORBA Released Parties only. The Parties do not release any claims against any other person or entity, other than the FORBA Released Parties, except to the extent provided for in Paragraph 17 (waiver for beneficiaries paragraph), below.

17. FORBA 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.

18. FORBA warrants that it has reviewed its financial situation and that following the restructuring outlined in Exhibit F hereto (the“Restructuring”), it will be solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent subject to the projections provided to the United States on February 10, 2009 (the“Projections”), following payment to the United States of the Settlement Amount. 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 FORBA, 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 FORBA was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

19. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, FORBA commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (1) seeking to have any order for relief of FORBA's debts, or seeking to adjudicate FORBA as bankrupt or insolvent; or (2) seeking appointment of a receiver, trustee, custodian, or other similar official for FORBA or for all or any substantial part of FORBA's assets, FORBA agrees as follows:

a. FORBA's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and FORBA shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) FORBA's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) FORBA was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to FORBA.

b. If FORBA's 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 releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against FORBA for the claims that would otherwise be covered by the releases provided in Paragraphs 24, above. FORBA agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude FORBA from participation in Medicare, Medicaid, or other Federal health care programs) 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 FORBA shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) FORBA 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 ninety (90) calendar days of written notification to FORBA that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date; and (iii) the United States has a valid claim against FORBA in the amount of forty-five million dollars (\$45,000,000.00), plus civil penalties to be determined by the Court, and the United States may pursue its claim 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. FORBA acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

20. a. If, for any reason, FORBA fails to pay any and all of the payments owed pursuant to this Agreement within fifteen (15) calendar days of the due date, the United States will provide written notice of the non-payment to the persons identified in Paragraph 20.b, below, and FORBA shall have an opportunity to pay the unpaid balance within fifteen (15) calendar days from the date of receipt of the written notice. If FORBA fails to pay the remaining unpaid balance of its payment obligations under this Agreement within fifteen (15) calendar days of receiving the notice of non-payment ("Default"), any dismissals as to FORBA shall, at the United States' option, be null and void, and the Settlement Amount referenced in Paragraph 1 above, less any payments already made, shall become immediately due and payable and shall bear interest at the Medicare interest rate (per 42 C.F.R. part 405.378) as of the date of Default until payment of the Settlement Amount is made in full. Furthermore:

In the event of Default as described above, the United States may at its option: (1) rescind its releases; (2) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing to FORBA by any department, agency, or agent of the United States at the time of Default; (3) institute an action or actions against FORBA in the United States District Court for the District of Maryland; and (4) FORBA agrees not to contest any draw, offset, or collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any court.

In the event of a Default as described above, FORBA agrees to pay the United States all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses. In the event the United States opts to rescind this Agreement pursuant a Default, FORBA agrees that: (i) FORBA 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 ninety (90) calendar days of written notification to FORBA that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date; and (ii) the United States has a valid claim against FORBA in the amount of forty-five million dollars (\$45,000,000.00) and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

b. The United States will provide notice, as required under Paragraph 20.a, above, by courier or registered mail, to Michael G. Lindley, FORBA Holdings, LLC, 618 Church Street, Suite 520, Nashville, TN 37219, and Grace M. Rodriguez, King & Spalding LLP, 1700 Pennsylvania Avenue NW, Washington, DC 20006.

21. In the event of a Default as defined in Paragraph 20, above, OIG-HHS may exclude FORBA from participating in all Federal health care programs until FORBA pays the

Settlement Amount and reasonable costs as set forth in Paragraphs 1 and 20 above. Such exclusion shall have national effect and shall also apply to all other federal procurement and nonprocurement programs. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by FORBA in any capacity while FORBA is excluded. This payment prohibition applies to FORBA and all other individuals and entities (including, for example, anyone who employs or contracts with FORBA, and any hospital or other provider where FORBA provides services). The exclusion applies regardless of who submits the claim or other request for payment. FORBA shall not submit or cause to be submitted to any Federal health care program any claim or request for payment for items or services, including administrative and management services, furnished, ordered, or prescribed by FORBA during the exclusion. Violation of the conditions of the exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. FORBA further agrees to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the Effective Date of the exclusion. FORBA waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion FORBA wishes to apply for reinstatement, FORBA must submit a written request for reinstatement to the OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-3005. FORBA will not be reinstated unless and until the OIG-HHS approves such request for reinstatement.

22. If after the Effective Date, and before FORBA has made all payments required pursuant to Paragraph 1 of this Agreement, FORBA's actual annual revenues for any

fiscal year exceed the projected revenues for that fiscal year as reflected in the Projections by fifteen percent (15%) or more, then an additional payment of \$1,000,000.00 shall be made for that applicable year (with a 40.48% pro rata share of the payment allocated to the Medicaid Participating States and the remaining 59.52% pro rata share allocated to the United States). Payments under this provision shall reduce the outstanding principal balance and shall be applied against principal payments due in the settlement payment schedule (Exhibit C) in reverse order, in order to shorten the total payment period. FORBA agrees to provide its financial statements no later than one-hundred and twenty (120) days following the end of each calendar year along with any payment required under this clause for that year. This will be measured annually.

If after the Effective Date, and before FORBA has made all payments required pursuant to Paragraph 1 of this Agreement, FORBA enters into management agreements with new clinics that are over and above the number of new clinics that were included in the Projections as of that year, then an additional payment of \$500,000.00 shall be made for each year in which the total number of clinics exceed the total number of clinics in the Projections as of that year (with a 40.48% pro rata share of the additional payment allocated to the Medicaid Participating States and the remaining 59.52% pro rata share allocated to the United States). Payments under this provision shall reduce the outstanding principal balance and shall be applied against principal payments due in the Payment Schedule in reverse payment order, in order to shorten the total payment period. FORBA shall provide an annual statement with a certification from a company officer that states the total number of new clinics that FORBA entered into management agreements with in that year no later than one-hundred and twenty (120) days following the end of each calendar year along with any payment required under this clause for that year.

If after the Effective Date, and before FORBA has made all payments required pursuant to Paragraph 1 of this Agreement, in the event of a "Company Change of Control," all principal and interest remaining outstanding and unpaid pursuant to this Settlement Agreement shall accelerate and become immediately due and payable, and such principal and accrued and unpaid interest shall be paid upon the consummation of such Company Change of Control. A "Company Change of Control" shall not include the Restructuring or transfers to existing equity owners in accordance with the Restructuring, and shall mean the sale of all or substantially all of the assets of FORBA, or the sale or transfer of more than fifty percent (50%) of the equity ownership of FORBA to any person not an equity owner of FORBA or otherwise an affiliate of FORBA on the date of this Settlement Agreement.

Amounts that are due under these paragraphs and not paid when due will be considered amounts in Default. Default amounts are subject to the Default provisions contained in this Settlement Agreement as specified in Paragraph 20, including the Default rate of interest at the Medicare interest rate (per 42 C.F.R. part 405.378) beginning as of the date of Default until payment of the Settlement Amount is made in full.

23. Upon receipt of their pro rata share of the Initial Payment described in Paragraph 1 above, the United States and Relators shall promptly sign and file in the Civil Actions a Notice of Intervention and Joint Stipulation of Dismissal of the Civil Actions pursuant to the terms of the Agreement.

24. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

25. FORBA represents that this Agreement is freely and voluntarily entered into without duress or compulsion.

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

35. This Agreement is effective on the date 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

TONY WEST
Assistant Attorney General

DATED: 1/15/10

BY: 
Andy J. Mao
Senior Counsel for Health Care Fraud and Elder Justice
Niall M. O'Donnell
Trial Attorney
Commercial Litigation Branch, Civil Division
United States Department of Justice

ROD J. ROSENSTEIN
United States Attorney, District of Maryland

DATED: _____

BY: _____
Thomas F. Corcoran
Assistant United States Attorney

TIMOTHY J. HEAPHY
United States Attorney, Western District of Virginia

DATED: _____

BY: _____
Rick A. Mountcastle
Assistant United States Attorney

W. WALTER WILKINS
United States Attorney, District of South Carolina

DATED: _____

BY: _____
Jennifer J. Aldrich
Assistant United States Attorney

DATED: _____

BY: _____
GREGORY E. DEMSKE
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

THE UNITED STATES OF AMERICA

TONY WEST
Assistant Attorney General

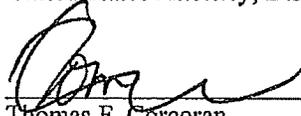
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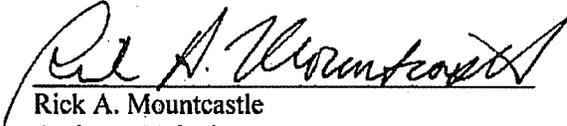
DATED: _____

BY: _____

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TIMOTHY J. HEAPHY
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BY: 

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BY: _____

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Niall M. O'Donnell
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BY: _____

Rick A. Mountcastle
Assistant United States Attorney

Acting
KEVIN McDONALD
W. WALTER WILKINS
United States Attorney, District of South Carolina

DATED: 1/15/10

BY: 

Jennifer J. Aldrich
Assistant United States Attorney

DATED: _____

BY: _____

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United States Department of Justice

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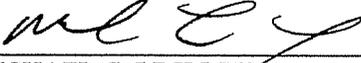
DATED: 1/15/19

BY: _____

GREGORY E. DEMSKE
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

FORBA - DEFENDANT

DATED: _____

BY: 
MICHAEL G. LINDLEY
Chief Executive Officer of FORBA

DATED: 1/14/10

BY: 
GRACE M. RODRIGUEZ
Counsel for FORBA

JOHN J. HANEY - Relator

DATED: 1-15-2010

BY: John J. Haney
JOHN J. HANEY

DATED: 1-15-2010

BY: Memo A. Pash
Counsel for John J. Haney

ANGELA CRAWFORD -Relator

DATED: 01-15-10

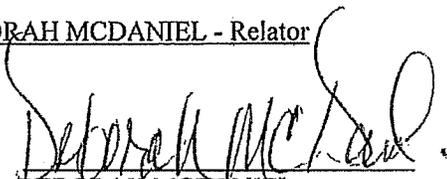
BY: Angela Crawford
ANGELA CRAWFORD

DATED: Jan. 15, 2010

BY: David P. Harper
Counsel for Angela Crawford

DEBORAH MCDANIEL - Relator

DATED: 1/15/10

BY: 
DEBORAH MCDANIEL

DATED: 1-15-12

BY: 
Counsel for Deborah McDaniel

