



**JOSH STEIN**  
**ATTORNEY GENERAL**

**STATE OF NORTH CAROLINA**  
**DEPARTMENT OF JUSTICE**

**SETH DEARMIN**  
**CHIEF OF STAFF**

July 1, 2024

North Carolina Senate President Pro Tempore Phil Berger  
North Carolina House of Representatives Speaker Tim Moore  
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator Danny Earl Britt, Jr.  
Senator Warren Daniel  
Representative Ted Davis, Jr.  
Representative Dudley Greene  
Representative Charles W. Miller  
Representative Carson Smith  
Co-Chairs, Appropriations Subcommittee on Justice and Public Safety

North Carolina General Assembly  
Raleigh, North Carolina 27601-1096

RE: G.S. §114-2.5; Report on Settlement Agreement for Family First Home Health Care, LLC/Marion James

Dear Members:

Section 114-2.5 of the North Carolina General Statutes requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the state and federal governments in the above-referenced matter. Pursuant to federal law (42 C.F.R. § 433.320) recoveries in these cases are shared on a pro rata basis by the state and federal governments.

A settlement has been executed between Family First Home Health Care, LLC/Marion James and the State of North Carolina.

The settlement resolves allegations that from January 1, 2015, through January 9, 2020, Family First submitted false claims to the Medicaid program for personal care services (a) that were not provided to beneficiaries, (b) were provided by aides to family member beneficiaries, (c) lacked supporting

documentation, (d) were purportedly provided by the same aide to two or more different beneficiaries living in different locations at the same times, and (e) were based on incomplete timesheets.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$658,484.57. Of that amount the federal government will receive \$380,077.29 for North Carolina's federal portion of Medicaid recoveries. Pursuant to G.S. § 1-610, the *qui tam* plaintiffs whose whistleblower actions brought this matter to the government's attention will receive \$50,113.31 of North Carolina's recovery. The North Carolina Medicaid Program will receive \$215,334.47 as restitution and interest. Pursuant to G.S. § 1-608(c), the North Carolina Department of Justice will receive \$12,959.50 for investigative costs.

We will be happy to respond to any questions you may have regarding this report.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Dearmin', followed by a large, stylized circular flourish.

Seth Dearmin  
Chief of Staff

LB:ng

cc: Sean Hamel, NCGA Fiscal Research Division  
Mark White, NCGA Fiscal Research Division  
Morgan Weiss, NCGA Fiscal Research Division

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Attorney’s Office for the Western District of North Carolina and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”); the State of North Carolina, acting through the North Carolina Office of the Attorney General (collectively the “Government”); and Family First Home Health Care, Inc. (“Family First”) and Marion James (“James”), and Heather Coleman (“Relator”). All of the above are hereafter collectively referred to as “the Parties” through their authorized representatives.

**RECITALS**

A. Family First, a North Carolina corporation located in Gastonia, NC, provides at-home personal care services to beneficiaries of governmental programs in the Western District of North Carolina. At all relevant times, James was the owner and manager of Family First, and Family First was a North Carolina Medicaid Provider.

B. On August 20, 2019, Relator filed a *qui tam* action in the United States District Court for the Western District of North Carolina (Docket No. 3:19-CV-405-FDW-DCK), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) and North Carolina False Claims Act, N.C. Gen. Stat. § 1-608(b). The Government partially intervened on September 12, 2022, and filed its Complaint in Intervention on November 14, 2022.

C. The Government contends that Family First and James submitted or caused to be submitted claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”), in violation of the Federal False Claims Act, 31 U.S.C. §§ 3729-3733, and the North Carolina False Claims Act, N.C.G.S. §§ 1-605, *et. seq.*

D. The Government contends that it has certain civil claims against Family First and

James arising from the following conduct from January 1, 2015 through January 9, 2020: Family First and James billed Medicaid for personal care services (a) that were not provided to beneficiaries, (b) were provided by aides to family member beneficiaries, (c) lacked supporting documentation, (d) were purportedly provided by the same aide to two or more different beneficiaries living in different locations at the same times, and (e) were based on incomplete timesheets (*i.e.* unsigned or undated).

The conduct described herein in Paragraph D is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by Family First and James, nor a concession by the Government that its claims are not well founded.

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.

G. 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. Family First and James shall pay to the Government the sum of \$600,000 (“Settlement Amount”), of which \$600,000 is restitution. The Settlement Amount constitutes a debt immediately due and owing in full on the Effective Date of this Agreement. Family First and James are jointly and severally responsible for the Settlement Amount, the Initial Payment, the Second Payment, the Payments over Time, and/or any and all amounts that may be due and owing under this Agreement. Family First and James shall pay said amount(s) by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Western District of North Carolina pursuant to the terms as set forth below.

- a. Within (30) days of the Effective Date of this Agreement, Family First and James shall pay \$30,000 via electronic funds transfer to the Government, which amount the Government will credit towards the Settlement Amount (“Initial Payment”).
- b. Within six (6) months of the Effective Date of this Agreement, Family First and James shall pay \$70,000 via electronic funds transfer to the Government, which amount the Government will credit towards the Settlement Amount (“Second Payment”).
- c. Over a period of sixty (60) months (“Payment Period”) after the Second Payment, Family First and James will pay via electronic funds transfer the remaining \$500,000, plus interest at 4.125% per annum, pursuant to the payment schedule attached as **Exhibit A** (the “Payments Over Time”) by 5 p.m. U.S. E.T. on or before each due date. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.
- d. If, within any year of the five (5) year period commencing on the first day of the month immediately following the Second Payment (each year of which is a “Measurement Period”), Family First’s annual gross revenue (including the revenue of any other property, entity, or venture in Family First has an ownership interest) for such Measurement Period exceeds \$1,300,000, Family First shall pay the Government an amount equal to two percent (2%) of annual gross revenue above \$1,300,000 for such Measurement Period (each a “Revenue Payment”). Within one hundred twenty (120) days of the end of each Measurement Period, Family First shall submit to the United States Attorney’s Office for the Western District of North Carolina annual financial statements and any other reasonably requested supporting documentation (“Annual Financials”) certified by a Certified Public Accountant. Family First shall pay any owed Revenue Payments to the Government by electronic funds transfer, pursuant to written instructions by the United States, within one hundred fifty (150) days of the end of each Measurement Period. As

used in this Agreement, “gross revenue” is defined as consistent with the Generally Accepted Accounting Principles (GAAP) definition of such term.

2. The Relator reserves her claim for the payment of expenses, attorneys’ fees, and costs for which Defendants may be liable under 31 U.S.C. § 3730(d) and agrees that the Court shall retain jurisdiction with regards to this claim.

3. 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), and that the Settlement Amount is also fair, adequate, and reasonable under all the circumstances. In connection with this Agreement and this Civil Action, Relator and her heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the Government in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the Government to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), or bar Relator from sharing in the proceeds of this Agreement. Moreover, the Government and Relator and her heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of her claims, and that no agreements concerning Relator’s share have been reached to date.

4. Family First and James have provided sworn financial disclosure statements (Financial Statements) to the United States, and the Government has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Family First and James each warrant that the Financial Statements are complete, accurate, and current. If the Government learns of asset(s) in which Family First or James had an interest at the time of this Settlement Agreement that were not disclosed in the Financial Statements, or if the Government learns of any

misrepresentation(s) by Family First or James on, or in connection with, the Financial Statements or this Settlement Agreement, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$20,000 or more (excluding valuation disputes regarding assets disclosed in the Financial Statements provided), the Government may at its option: (a) rescind this Settlement Agreement as to Family First and/or James and reinstate its suit based on the Covered Conduct, or (b) let the Settlement Agreement stand and collect on the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Family First or James previously undisclosed. Family First and James agree not to contest any collection action undertaken by the Government pursuant to this provision, and immediately to pay the Government all reasonable costs incurred in such an action, including attorney's fees and expenses.

5. In the event that the Government, pursuant to paragraph 4 (concerning disclosure of assets) above, opts to rescind this Agreement, Family First and James agree not to plead, argue, or otherwise raise any defenses under the theories of statutes of limitations, laches, and estoppel, or similar theories, to the allegations in the complaint, except to the extent such defenses were available to them on the Effective Date of this Agreement.

6. Subject to Paragraph 4 (concerning disclosure of assets) below, the exceptions in Paragraph 8 (concerning excluded claims) below, and subject to Paragraphs 16 and 17 (concerning default and bankruptcy) below, and conditioned upon the full payment of the Settlement Amount, the Government releases Family First and James from any civil or administrative monetary claims the Government has for the Covered Conduct under the Federal 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, the North Carolina False Claims Act, N.C.G.S. § 1-605, *et seq.*, or the common law theories of payment by mistake, unjust enrichment, and fraud.



7. Subject to Paragraph 4 (concerning disclosure of assets) below, the exceptions in Paragraph 8 (concerning excluded claims) below, and subject to Paragraphs 16 and 17 (concerning default and bankruptcy) below, and upon the Government's receipt of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Defendants from any civil monetary claim the Relator has on behalf of the Government for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

8. Notwithstanding the releases given in Paragraph 6 of this Agreement, or any other term of this Agreement, the following claims and rights of the Government 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 Government (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 for the liability of Marion James that is released pursuant to this Agreement; and
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

9. Family First and James waive and shall not assert any defenses Family First and/or James 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. Family First and James fully and finally release the Government, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Family First and/or James have asserted, could have asserted, or may assert in the future against the Government, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the Government's investigation and prosecution thereof.

11. Family First and James fully and finally release the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Family First and/or James have asserted, could have asserted, or may assert in the future against the Relator, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the Government's investigation and prosecution thereof.

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, including any Medicaid Program or any Medicaid contractor or intermediary, related to the Covered Conduct; and Family First and James agree not to resubmit to any Medicare contractor or any state payer, including any Medicaid Program or any Medicaid contractor or intermediary, 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. Family First and James 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 Family First and/or James, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the Government's audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) Family First and James's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Family First and James makes to the Government 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) ("Unallowable Costs").

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: Family First and James further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, 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 Family First and James 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. Family First and James agree that the Government, at a minimum, shall be entitled to recoup from Family First and James 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 Government pursuant to the direction of the Department of Justice and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by Family First and/or James or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Family First or James 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 Government to audit, examine, or re-examine Family First and James's books and records

to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

14. Family First and James agree to cooperate fully and truthfully with the Government's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Family First and James shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Family First and James further agree to furnish to the Government, 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 they have undertaken, or that has been performed by another on their behalf.

15. Family First and James 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. The Settlement Amount represents the amount the Government is willing to accept in compromise of its civil claims arising from the Covered Conduct due solely to Family First and Marion James's financial condition as reflected in the financial disclosures referenced above and the Settlement Amount is to be paid over time as set forth in Paragraph 1, above.

a. In the event that Family First and James fail to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1, above, within five (5) business days of the date upon which such payment is due, Family First and James shall be in Default of their payment obligations ("Default"). The Government will provide a written

Notice of Default, and Family First and James shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Family First and James through their undersigned counsel, or to such other representative as Family First and James shall designate in advance in writing. If Family First and James fail to cure the Default within seven (7) calendar days of receiving the Notice of Default (“Uncured Default”), and in the absence of an agreement with the Government to a modified payment schedule, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal, balance, and interest due).

b. In the event of an Uncured Default, the Government may, in its sole discretion: (i) choose to set aside this Agreement and bring an action against Family First and James for the Covered Conduct or for breach of contract; (ii) retain any payments previously made, and (iii) immediately and without further notice take any of the actions set forth in this Paragraph, including but not limited to any and all collection or foreclosure actions described herein and seeking entry of a consent order allowing final judgment in the Settlement Amount, reduced by the amount of any Settlement Payments previously made by Family First and James to the Government under this Agreement, to be entered against Family First and James, such judgment to be subject to interest accruing from the date of entry and at the applicable Treasury post-judgment interest rate, computed daily and compounded annually. Family First and James agree not to contest any action

undertaken by the Government pursuant to this Paragraph, either administratively, or in any state or federal court, except on the grounds of actual payment to the Government.

c. Family First and James shall provide security as to the entire Settlement Amount by signing, contemporaneously with this Agreement, a Consent Judgment for the amount of \$600,000. That signed Consent Judgment is attached hereto as **Exhibit B**, and the Government may file it in a civil action for breach of contract or other claim immediately upon Family First or James's failure to timely pay the Settlement Amount (including timely making each installment payment) as described in Paragraph 1, above.

d. In addition, Marion James agrees to execute a Deed of Trust listing the United States as trustee on the real property owned by Marion James located at 2912 Berwick Lane, Gastonia, NC 28054 ("Berwick Lane Property"). Said Deed of Trust is attached hereto as **Exhibit C** and is to be executed and notarized by Marion James contemporaneously with this Agreement. Upon Marion James or Family First's Default on any term of this Agreement, the Government will be entitled to pursue any collection remedies allowed by law and this Agreement, including foreclosure of the Berwick Lane Property, for the remaining balance of the Settlement Amount, including all accrued interest. Furthermore, until the Berwick Lane Property is sold, Marion James shall make all mortgage, tax, and other required payments for the property (including bringing the mortgage loan current by paying any and all arrears, accrued interest, costs, and fees), and shall maintain complete homeowner's insurance on the property. Furthermore, Marion James agrees not to take any action that would negatively affect the availability or value of the Berwick Lane Property, including but not limited to pledging, encumbering, damaging, destroying, wasting, or in any way lessening the value of the property. Any action to the

contrary shall constitute a Default under this Agreement, and the Government may pursue any and all remedies permitted by law, as described in Paragraph 11.

e. In the event of Uncured Default, OIG-HHS may exclude Family First and James from participating in all Federal health care programs until Family First and James pay the Settlement Amount, with interest, as set forth above (“Exclusion for Default”). OIG-HHS will provide written notice of any such exclusion to Family First and James. Family First and James waive any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7) and agree 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, Family First and James wish to apply for reinstatement, it must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Family First and James will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

g. In addition to the remedies provided in this Paragraph, if Family First and/or James Defaults on any of their obligations under this Agreement, the Government may take whatever steps it is entitled to take pursuant to law to enforce the obligations of this Agreement, including but not limited to (1) any and all collection action, (2) any breach of contract action, and/or (3) a Civil Action for the Covered Conduct. In the event a civil action for the Covered Conduct is filed, Family First and James agree not to plead, argue, or otherwise raise any defenses under the theories of statutes of limitations, laches, and estoppel, or similar theories, to the allegations in the complaint, except to the extent such defenses were available to them on the Effective Date of this Agreement. Family First and



James shall pay to the Government all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses.

h. Furthermore, if Family First and/or James Defaults on any terms under this Agreement, they agree to provide full financial disclosures to the Government. The Government may request, and Family First and James shall provide, any and all documents relating to their financial condition, including but not limited to joint or individual (if filing separately) state and federal tax returns and the tax returns for any businesses that they own, have an interest in, or participate in, including all schedules and attachments; all bank account statements (including copies of deposits and checks), for every bank account to which Family First and James have access or an interest (including but not limited to personal accounts, joint accounts, and business accounts); and an updated financial affidavit for any business that Family First and James own or have an interest in.

i. If Family first is sold, merged, or transferred, or a majority of the assets of Family First are sold, merged, or transferred into another non-affiliated entity prior to payment of the full settlement amount, Family First and James shall promptly notify the Government, and all remaining payments owed pursuant to the Settlement Agreement shall be accelerated and become immediately due and payable.

17. In exchange for valuable consideration provided in this Agreement, Family First and James acknowledge the following:

a. Family First and James have reviewed their financial situation and warrant that they are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the Government of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous

exchange for new value given to Family First and James, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Family First and/or James was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If Family First and/or James'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) or if, before the Settlement Amount is paid in full, Family First and/or James, or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Family First and/or James's debts, or to adjudicate Family First and/or James as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Family First and/or James or for all or any substantial part of Family First and/or James's assets:

(i) The Government may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Family First and/or James for the claims that would otherwise be covered by the releases provided in Paragraph 6, above;

(ii) The Government has an undisputed, noncontingent, and liquidated allowed claim against Family First and James in the amount of \$2,687,377.50, less any payments received pursuant to this agreement, provided, however, that such

payments are not otherwise avoided and recovered from the Government by Family First and/or James, a receiver, trustee, custodian, or other similar official for Family First and/or James.

(iii.) If any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the Government shall not be responsible for the return of any amounts already paid by the Government to the Relator; and

(iv.) If, notwithstanding subparagraph (iii), any amounts already paid by the Government to the Relator pursuant to Paragraph 2 are recovered from the Government in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment made under Paragraph 1 of this Agreement, Relator shall, within thirty (30) days of written notice from the Government to the undersigned Relator's counsel, return to the Government all amounts recovered from the Government.

f. Family First and James agree that any civil and/or administrative claim, action, or proceeding brought by the Government under Paragraph 17.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the Government's police and regulatory power. Family First and/or James shall not argue or otherwise contend that the Government's claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Family First and James waive and 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 claim, action, or proceeding brought by the Government within 120 days of written notification to Family First and/or

James that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of this Agreement.

18. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except as described in Paragraph 2 above.

19. This Agreement is intended to be for the benefit of the Parties.

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

21. 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 North Carolina. 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.

22. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the Government from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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

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

25. This Agreement is binding on Family First and/or James's successors, transferees, heirs, and assigns (including but not limited to Gaston Piedmont Health Care Inc.).

26. All Parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.

27. If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable, such term or provision will be excluded and stricken from this Agreement to the extent of such invalidity, illegality, or unenforceability; all other terms and provisions herein shall remain in full force and effect.

28. Upon receipt of the Initial Payment, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

29. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

\* \* \*

(signatures on following pages)

**UNITED STATES OF AMERICA**

DENA J. KING  
United States Attorney for the  
Western District of North Carolina

JOHN  
JOHNSON

Digitally signed by  
JOHN JOHNSON  
Date: 2024.03.12  
15:43:19 -04'00'

Dated: \_\_\_\_\_

BY: J. SETH JOHNSON  
Assistant United States Attorney

SUSAN GILLIN

Digitally signed by SUSAN  
GILLIN  
Date: 2024.02.23 15:15:21 -05'00'

Dated: \_\_\_\_\_

BY: SUSAN E. GILLIN  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
United States Department of Health and Human Services

**STATE OF NORTH CAROLINA**

Dated: \_\_\_\_\_

BY: F. EDWARD KIRBY, JR.  
Director, Medicaid Investigations Division  
North Carolina Department of Justice

**NC DEPARTMENT OF HEALTH & HUMAN SERVICES,  
DIVISION OF HEALTH BENEFITS**

Dated: \_\_\_\_\_

BY: JAY LUDLAM  
Deputy Secretary, NC Medicaid  
NC Department of Health & Human Services, Division of Health Benefits

**UNITED STATES OF AMERICA**

DENA J. KING  
United States Attorney for the  
Western District of North Carolina


\_\_\_\_\_  
BY: J. SETH JOHNSON  
Assistant United States Attorney

Dated: \_\_\_\_\_

\_\_\_\_\_  
BY: SUSAN E. GILLIN  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
United States Department of Health and Human Services

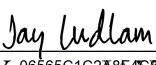
Dated: \_\_\_\_\_

**STATE OF NORTH CAROLINA**

  
\_\_\_\_\_  
BY: F. EDWARD KIRBY, JR.  
Director, Medicaid Investigations Division  
North Carolina Department of Justice

Dated: 2/29/2024

**NC DEPARTMENT OF HEALTH & HUMAN SERVICES,  
DIVISION OF HEALTH BENEFITS**

DocuSigned by:  
  
\_\_\_\_\_  
BY: JAY LUDLAM  
Deputy Secretary, NC Medicaid  
NC Department of Health & Human Services, Division of Health Benefits

Dated: 03/01/24 | 11:44 AM EST



MARION JAMES

Marion James  
MARION JAMES

Dated: 2/16/2024

Mark L. Jones  
MARK JONES  
Counsel for Marion James

Dated: 2/16/2024

FAMILY FIRST HOME HEALTH CARE, INC


Marion James  
MARION JAMES  
Owner/authorized agent

Dated: 2/16/2024

Mark L. Jones  
MARK JONES  
Counsel for Family First Home Health Care, Inc

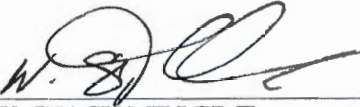
Dated: 2/16/2024

**RELATOR**

  
Heather Coleman (Mar 11, 2024 17:01 EDT)

HEATHER COLEMAN

Dated: Mar 11, 2024

  
W. STACY MILLER II  
Counsel for Relator

Dated: 3-11-24