



State of North Carolina

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January 3, 2013

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

Senator Harry Brown
Senator Thom Goolsby
Representative James Boles, Jr.
Representative Leo Daughtry
Representative Pat Hurley
Representative Shirley B. Randleman
Co-Chairs, Appropriations Subcommittees 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 OC3, Inc., Will
Outlaw, Norman Cherry, Marshall Cherry & Vanderbilt Cherry

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.

The Settlement Agreements have been executed between OC3, Inc., Marshall Cherry, Norman Cherry and Vanderbilt Cherry and the State of North Carolina. OC3, Inc. was an ambulance transport company doing business as Preferred Medical Transport. Will Outlaw, Norman Cherry, Marshall Cherry and Vanderbilt Cherry owned and operated OC3. OC3 provided routine non-emergency ambulance transport in North Carolina.

The settlements resolve allegations that from January 1, 2004 through August 1, 2010, OC3 knowingly billed the Medicare and Medicaid programs for non-emergency ambulance transport of dialysis patients and others to and from their nursing homes and residences, which were not medically necessary.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$205,000.00. Of that amount the federal government will receive \$201,194.04 to satisfy North Carolina's obligation to return the federal portion of Medicaid and Medicare recoveries to the federal government. The North Carolina Medicaid Program will receive \$3,805.96 as restitution and interest. Pursuant to G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$150.72 for investigative costs.

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

Very truly yours,


Kristi Hyman
Chief of Staff

KH:ng

cc: Kristine Leggett, NCGA Fiscal Research Division
Nels Roseland, NCDOJ, Deputy Chief of Staff

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the "United States"), the State of North Carolina, by and through the North Carolina Attorney General, and the North Carolina Division of Medical Assistance (collectively the "Government" includes both federal and state entities above), and OC3, Inc. (hereinafter "OC3"), through their authorized representatives. The above parties to this agreement are hereafter collectively referred to as "the Parties."

RECITALS

A. Defendants Vanderbilt Cherry, Marshall Cherry, Norman Cherry, and William Outlaw, owned and operated OC3, an ambulance transport company doing business as Preferred Medical, that provided routine non-emergency ambulance transport in North Carolina.

B. On October 14, 2010, the United States filed an action in the United District Court of the Eastern District of North Carolina captioned *United States v. OC3, Inc., doing business as Preferred Medical Transport, Inc., Marshall Cherry, Norman Cherry, Vanderbilt Cherry, and Will Outlaw*, Case No.2:10-CV-52-H2 (the "Civil Action").

C. The Government contends that OC3 submitted or caused claims to be submitted for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and the Medicaid Program (Medicaid) 42 U.S.C. §§ 1396-1396w-5.

D. The Government contends that it has certain civil claims against OC3, arising from false claims to Medicare and Medicaid for non-emergency ambulance transport for dialysis patients which was not medically necessary during the period from January 1, 2004, through August 1, 2010, for OC3 and Preferred Medical. That conduct is referred to below as the

Covered Conduct.

E. This Settlement Agreement is neither an admission of liability by OC3, nor a concession by the Government that its claims are not well founded.

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. OC3 shall pay to the Government \$180,000 ("Settlement Amount"), jointly and severally with Vanderbilt Cherry, Marshall Cherry and Norman Cherry, and interest on the Settlement Amount at the rate of 4% per annum or the Medicare Trust Fund Interest Rate, whichever is higher, from May 10, 2012, as follows:

a. Norman Cherry, Vanderbilt Cherry and Marshall Cherry agreed to make a total joint payment of \$12,000.00 of the Settlement Amount, with additional monthly payments by the individuals. Defendant OC3 has no scheduled payments.

b. In order to secure this Settlement Agreement, OC3 shall enter a consent judgment, contemporaneously with this Settlement Agreement, holding that OC3 is liable in the full Settlement Amount, jointly and severally with Norman Cherry, Vanderbilt Cherry and Marshall Cherry, plus interest at a rate of 4% or the Medicare Trust Fund Interest Rate, whichever is higher, and this consent judgment shall be properly recorded where property has been identified.

c. If OC3, defaults on this Agreement in any way or the consent judgment is not paid in full within 3 years from the Effective date, OC3 agrees to fully cooperate in further collection against its available property and income as the Government pursues full collection against those who entered the consent judgment.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon OC3's full payment of the Settlement Amount, and subject to Paragraph 13, 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 releases OC3 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.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon OC3's full payment of the Settlement Amount, and subject to Paragraph 13 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the State of North Carolina releases OC3 from any civil or administrative monetary claim the State of North Carolina has for the Covered Conduct under the North Carolina Medical Assistance Provider False Claims Act, N.C.G.S. § 108A-70.10 et. seq., the North Carolina False Claims Act, N.C.G.S. § 1-605 et. seq., and the common law theories of payment by mistake, unjust enrichment, and fraud.

4. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against OC3 and/or OC3'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).

5. Notwithstanding the release given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims 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, including mandatory 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 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 failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. OC3 waives and shall not assert any defenses it 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 Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

7. OC3 fully and finally releases 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 OC3 has asserted, could have asserted, or may assert

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

8. 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 carrier or intermediary or any state payer, related to the Covered Conduct; and OC3 agrees not to resubmit to any Medicare 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.

9. OC3 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of OC3, its 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 investigation(s) of the matters covered by this Agreement;
- (3) OC3's investigation, defense, and corrective actions undertaken in response to the Government's 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; and
- (5) the payment OC3 makes to the Government pursuant to this Agreement.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by OC3, and they shall not charge such Unallowable Costs

directly or indirectly to any contracts with the Government 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 OC3 or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: OC3 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) included in payments previously sought from the Government, 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 OC3 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. OC3 agrees that the Government, at a minimum, shall be entitled to recoup from OC3 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 OC3 or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on OC3 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

Government to audit, examine, or re-examine OC3's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

10. OC3 agrees to cooperate fully and truthfully with the Government's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, OC3 shall encourage, and agrees not to impair, the cooperation of OC3's directors, officers, and employees, and shall use their best efforts to make available, and encourage, the cooperation of former OC3 directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. OC3 further agrees to furnish to the Government, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in his possession, custody, or control concerning any investigation of the Covered Conduct that he or OC3 have undertaken, or that have been performed by another on their behalf.

11. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 12 (waiver for beneficiaries paragraph), below.

12. OC3 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.

13. OC3 warrants that it has reviewed his financial situation and that he currently is 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. 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 OC3, 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 OC3 was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

14. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, OC3 commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of OC3's debts, or seeking to adjudicate OC3 as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for OC3, or for all or any substantial part of OC3's assets, OC3 agrees as follows:

a. OC3's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and OC3 shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) OC3's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) OC3 was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the Government; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to OC3.

b. If OC3'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 Government, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against OC3 for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. OC3

agrees that (I) any such claims, actions, or proceedings brought by the Government 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 OC3 shall not argue or otherwise contend that the Government's claims, actions, or proceedings are subject to an automatic stay; (ii) OC3 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 Government within 180 calendar days of written notification to OC3 that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on October 14, 2010; and (iii) the Government has a valid claim against OC3 in the amount of \$2,031,816, and the Government 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. OC3 acknowledges that his agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

15. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern 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.

18. This Agreement constitutes the complete agreement between the Parties. This

Agreement may not be amended except by written consent of the Parties.

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

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 OC3's successors, transferees, heirs, and assigns.

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

23. This Agreement is effective on the date of signature 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

DATED: 8-23-12

THOMAS G. WALKER
United States Attorney

BY: 

NEAL I. FOWLER
Assistant United States Attorney
Eastern District of North Carolina

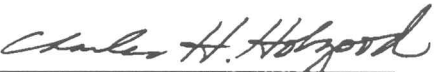
DATED: 8/21/12

BY: 

GREGORY E. DEMSKE
Chief Counsel to the Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE STATE OF NORTH CAROLINA

DATED: 8/16/2012

By: 
CHARLES H. HOBGOOD
Special Deputy Attorney General
North Carolina Department of Justice
Telephone: (919) 881-2334

OC3 - DEFENDANT

DATED 8/7/2012

BY: Mr. Marshall Cherry
Marshall Cherry, President OC3, INC

DATED 8/7/2012

BY: James E. Harston, Jr.
Counsel for Defendant OC3, Inc.

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the "United States"), the State of North Carolina, by and through the North Carolina Attorney General, and the North Carolina Division of Medical Assistance (collectively the "Government" includes both federal and state entities above), through their authorized representatives, and Will Outlaw, proceeding pro se. The above parties to this agreement are hereafter collectively referred to as "the Parties."

RECITALS

A. Defendant Will Outlaw, along with Vanderbilt Cherry, Marshall Cherry, and Norman Cherry, owned and operated OC3, Inc., an ambulance transport company doing business as Preferred Medical, that provided routine non-emergency ambulance transport in North Carolina.

B. On October 14, 2010, the United States filed an action in the United District Court of the Eastern District of North Carolina captioned *United States v. OC3, Inc., doing business as Preferred Medical Transport, Inc., Marshall Cherry, Norman Cherry, Vanderbilt Cherry, and Will Outlaw*, Case No.2:10-CV-52-H2 (the "Civil Action").

C. The Government contends that Will Outlaw submitted or caused claims to be submitted for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and the Medicaid Program (Medicaid) 42 U.S.C. §§ 1396-1396w-5.

D. The Government contends that it has certain civil claims against Will Outlaw arising from false claims to Medicare and Medicaid for non-emergency ambulance transport for dialysis patients which was not medically necessary during the period from January 1, 2004,

through August 1, 2010, for OC3, Inc. and Preferred Medical. That conduct is referred to below as the Covered Conduct.

E. This Settlement Agreement is neither an admission of liability by Will Outlaw nor a concession by the Government that its claims are not well founded.

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. Will Outlaw shall pay to the Government \$25,000 ("Settlement Amount"), and interest on the Settlement Amount at the rate of 4% per annum or the Medicare Trust Fund Interest Rate, whichever is higher, from the Effective Date of this agreement, as follows:

a. Will Outlaw shall make a payment of \$5,000.00 of the Settlement Amount within 45 business days of the Effective Date of this agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office.

b. Will Outlaw shall make regular monthly payments of \$400 per month for 36 months, beginning the 15th day of the month following the Effective Date of this agreement, as directed by the United States Attorney's Office, with a final balloon payment of the remaining balance of approximately \$5,600 within 3 years of the Effective Date..

c. In order to secure this Settlement Agreement, Will Outlaw shall enter a consent judgment, contemporaneously with this Settlement Agreement, holding that Will Outlaw is liable in the full Settlement Amount, plus interest at a rate of 4% or the Medicare Trust Fund Interest Rate, whichever is higher, and this consent judgment shall be properly recorded.

d. If Will Outlaw defaults on this Agreement in any way or the consent judgment is not paid in full within 3 years from the Effective date, Will Outlaw agrees to fully

cooperate in further collection against his available property and income as the Government pursues full collection against those who entered the consent judgment.

e. In the event that Will Outlaw fails to pay any amount as provided in paragraph 1 within five (5) business days of the date on which such payment is due, Defendant shall be in default of his payment obligations ("Default"). The Government will provide written notice of the Default to Will Outlaw and Will Outlaw shall have the opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default will be delivered to Will Outlaw or to such other representative as Will Outlaw shall designate in advance in writing. If Will Outlaw fails to cure such Default within five (5) business days of receiving the Notice of Default, 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 and interest balance). Will Outlaw shall consent to a Consent Judgment in the amount of the unpaid balance, and the Government, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to Will Outlaw by any department, agency, or agent of the Government at the time of Default; (b) collect the entire unpaid balance of the Settlement Amount, plus interest, including 12% interest from the date of Default, and all other amounts due upon the event of Default as specified in this paragraph; (c) file a civil action for the Covered Conduct; or (d) exercise any other rights granted by law or in equity, including referral of this matter for private collection. In the event a complaint is filed pursuant to subsection © of this paragraph, Will Outlaw agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories to the allegations in the complaint, except to the extent such defenses were available to Will Outlaw on the Effective Date. Will Outlaw agrees not to contest any consent judgment, offset, or any collection action undertaken

by the Government pursuant to this paragraph, either administratively or in any state or federal court. Will Outlaw shall pay Government all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Will Outlaw's full payment of the Settlement Amount, and subject to Paragraph 15, 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 releases Will Outlaw 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.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Will Outlaw's full payment of the Settlement Amount, and subject to Paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the State of North Carolina releases Will Outlaw from any civil or administrative monetary claim the State of North Carolina has for the Covered Conduct under the North Carolina Medical Assistance Provider False Claims Act, N.C.G.S. § 108A-70.10 et. seq., the North Carolina False Claims Act, N.C.G.S. § 1-605 et. seq., and the common law theories of payment by mistake, unjust enrichment, and fraud.

4. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Will Outlaw and/or OC3'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 1(e), above, OIG-HHS may exclude Will Outlaw from participating in all Federal health care programs until Will Outlaw pays the Settlement Amount and reasonable costs as set forth in Paragraph 1(e), above. OIG-HHS will provide written notice of any such exclusion to Will Outlaw. Will Outlaw 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 Will Outlaw wishes to apply for reinstatement, Will Outlaw must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-3005. Will Outlaw will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

5. Notwithstanding the release given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims 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, including mandatory 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 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 failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Will Outlaw has provided sworn financial disclosure statements (Financial Statements) to the Government and the Government has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Will Outlaw warrants that the Financial Statements are complete, accurate, and current. If the Government learns of asset(s) in which Will Outlaw has an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the Government learns of any misrepresentation by Will Outlaw on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$20,000 or more, the Government 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 Defendants previously undisclosed. Will Outlaw agrees 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.

7. In the event that the Government, pursuant to Paragraph 6 (concerning disclosure of assets), above, opts to rescind this Agreement, Will Outlaw 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 Government within sixty (60) calendar days of written notification to Will Outlaw that this

Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on October 14, 2010.

8. Will Outlaw waives and shall not assert any defenses he 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 Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. Will Outlaw fully and finally releases 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 Will Outlaw has asserted, could have asserted, or may assert in the future against the Government, and its agencies, employees, servants, and agents, related to the Covered Conduct and the Government's investigation and prosecution thereof.

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 carrier or intermediary or any state payer, related to the Covered Conduct; and Will Outlaw agrees not to resubmit to any Medicare 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.

11. Will Outlaw 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Will Outlaw or OC3, its 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 investigation(s) of the matters covered by this Agreement;
- (3) Will Outlaw or OC3's investigation, defense, and corrective actions undertaken in response to the Government's 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; and
- (5) the payment Will Outlaw makes to the Government pursuant to this Agreement.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by OC3 or Will Outlaw, and they shall not charge such Unallowable Costs directly or indirectly to any contracts with the Government 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 OC3 or Will Outlaw or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Will Outlaw further agrees that within 90 days of the Effective Date of this Agreement he 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 Government, 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 OC3 or Will Outlaw 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. Will Outlaw agrees that the Government, at a minimum, shall be entitled to recoup from OC3 or Will Outlaw 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 OC3 or Will Outlaw or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on OC3 or Will Outlaw 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 Government to audit, examine, or re-examine OC3's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

12. Will Outlaw agrees to cooperate fully and truthfully with the Government's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Will Outlaw shall encourage, and agrees not to impair, the cooperation of OC3's directors, officers, and employees, and shall use their best efforts to make available, and encourage, the cooperation of former OC3 directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Will Outlaw further agrees to furnish to the Government, upon request, complete and unredacted copies of all non-privileged

documents, reports, memoranda of interviews, and records his possession, custody, or control concerning any investigation of the Covered Conduct that he or OC3 have undertaken, or that have been performed by another on their behalf.

13. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 14 (waiver for beneficiaries paragraph), below.

14. Will Outlaw agrees that he 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.

15. Will Outlaw warrants that he has reviewed his financial situation and that he currently is 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. 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 Will Outlaw, 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 Will Outlaw was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Will Outlaw commences, or a third party commences, any case,

proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Will Outlaw's debts, or seeking to adjudicate Will Outlaw as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Will Outlaw or for all or any substantial part of Will Outlaw's assets, Will Outlaw agrees as follows:

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

b. If Will Outlaw'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 Government, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Will Outlaw for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. Will Outlaw agrees that (I) any such claims, actions, or proceedings brought by the Government 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 Will Outlaw shall not argue or otherwise contend that the Government's claims, actions, or proceedings are subject to an automatic stay; (ii) Will Outlaw 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

Government within 180 calendar days of written notification to Will Outlaw that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on October 14, 2010; and (iii) the Government has a valid claim against Will Outlaw in the amount of \$2,031,816, and the Government 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. Will Outlaw acknowledges that his agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern 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.

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

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

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

23. This Agreement is binding on Will Outlaw's successors, transferees, heirs, and

assigns.

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

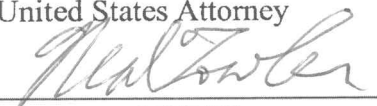
25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 8-23-12

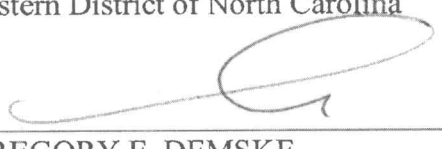
THOMAS G. WALKER
United States Attorney

BY:


NEAL I. FOWLER
Assistant United States Attorney
Eastern District of North Carolina

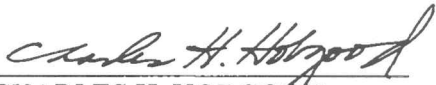
DATED: 8/21/12

BY:


GREGORY E. DEMSKE
Chief Counsel to the Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

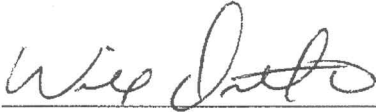
THE STATE OF NORTH CAROLINA

DATED: 8/16/2012

By: 
CHARLES H. HOBGOOD
Special Deputy Attorney General
North Carolina Department of Justice
Telephone: (919) 881-2334

WILL OUTLAW- DEFENDANT

DATED: 8/3/12

BY: 
Will Outlaw, Pro Se