

FILED

15 DEC 15 PM 1:31

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

U.S. DISTRICT COURT
NORTHERN OHIO DISTRICT
AKRON

UNITED STATES OF AMERICA, ex)	Case No.: 5:10CV2846
rel. Barbara Petkovic, et al.,)	
)	JUDGE LIOI
v.)	
)	
Mobile Medical, Inc. et al.,)	
)	
Defendants.)	
)	

CONSENT JUDGMENT

Pursuant to the Settlement Agreement executed by the parties in the above-captioned action, as well as the action captioned U.S. ex rel. Brown et al. v. Mobile Medical, Case No. 1:10-CV-878 (Judge Barrett). (Southern District of Ohio) ("SDOH matter) (attached hereto as Exhibit A),

JUDGMENT IS HEREBY ENTERED AGAINST MOBILE MEDICAL, INC. AND IN FAVOR OF THE UNITED STATES OF AMERICA AS FOLLOWS:


- To resolve both this matter and the SDOH matter, in the amount of \$4,500,000, together with 3% interest to begin accruing on January 1, 2016 on the unpaid balance if payments are made in accordance with the schedule set forth in paragraph 2 of Exhibit A hereto;
- in the event payments are not made according to paragraph 2 of Exhibit A hereto, and the United States notifies Mobile Medical of the default pursuant to the provisions set forth in paragraph 4 of Exhibit A hereto, and Mobile Medical, Inc. has not cured the default within 15 days, interest on any unpaid balance shall begin to accrue at 12% per annum, compounded daily, as of the date Mobile Medical has failed to cure the default;
- in the event payments are not made according to paragraph 2 of Exhibit A hereto, and the United States notifies Mobile Medical of the default pursuant to the provisions set forth in paragraph 4 of Exhibit A hereto, and Mobile Medical, Inc. has not cured the default within 15 days, the United States may, without further notice to Mobile Medical, file in this action a "Notice of Default." Immediately upon such filing, any stipulation of dismissal or order dismissing this matter shall be vacated with no further action required, and the case shall be reopened pursuant to the Court's retention of jurisdiction to enforce the terms of the settlement reached by the parties.

Defendants, and the United States shall each bear their own costs, fees, and expenses not otherwise addressed in the Settlement Agreement.

APPROVED AND AGREED BY:

THE UNITED STATES OF AMERICA

DATED: 12/14/15


BY: 
MICHELLE L. HEYER (Bar 0065723)
Assistant United States Attorney
Northern District of Ohio

DEFENDANT

DATED: 12/6/15

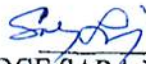
BY: 
MOBILE MEDICAL, Inc.

DATED: 12/18/15

BY: 
Stephen G. Sozio (Bar 0032405)
Counsel for Mobile Medical, Inc.

JUDGMENT IS ENTERED AS SET FORTH HEREIN.

DATED: 12/15/2015


JUDGE SARA LIOI
UNITED STATES DISTRICT COURT

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is entered into among:

- (a) 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”) (the “United States”);
 - (b) Relators in S.D. Ohio Case No. 1:10-cv-878, Captioned U.S. ex rel. Richard J. Brown, et al. v. Mobile Medical, Inc., d/b/a Onsite Health Care, et al. (“SDOH Relators”);
 - (c) Relators in N.D. Ohio Case No. [REDACTED], Captioned U.S. ex rel. Barbara Petkovic, et al. v. [REDACTED]. (“NDOH Relators”); and
 - (d) Mobile Medical, Inc., doing business as Onsite Health Care (“Mobile Medical”);
- (hereafter collectively referred to as “Parties” and individually referred to generically as “Party”), through their authorized representatives.

RECITALS

A. On December 13, 2010, SDOH Relators filed their qui tam action in the United States District Court for the Southern District of Ohio, Western Division. On December 26, 2010, NDOH Relators filed their qui tam action in the United States District Court for the Northern District of Ohio. Both cases were filed pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Actions”). In their complaints, the SDOH Relators and NDOH Relators allege that defendant Mobile Medical submitted or caused to be submitted false claims for medical services and durable medical equipment provided to beneficiaries insured under federally-funded healthcare programs because the services for which claims were submitted were either not provided, were upcoded, or were otherwise not subject to

reimbursement by federally-funded healthcare programs. The United States has not yet intervened in the Civil Actions against Mobile Medical.

B. The United States contends that Mobile Medical submitted or caused to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1.

C. The United States contends it has certain civil claims against Mobile Medical arising from the submission of claims generated and/or billed to Medicare by or on behalf of its facilities during the period from January 1, 2009 through December 31, 2012, for the following:

1. violation of the Anti-Kickback Statute by offering the following inducements to nursing homes in exchange for referral of Medicare business from the nursing homes: providing nursing homes with diabetic shoes to be provided to patients and billed to Medicare at a profit by the nursing home; providing “transporter” services to nursing homes whereby Mobile Medical provided and paid for employees to transport patients from patient rooms to medical appointments conducted by Mobile Medical employed providers at the nursing homes; providing “warranties” on eyeglasses, dentures and hearing aids that were not supplied by Mobile Medical; and providing audiology services without requiring payment from the patients or nursing homes and by waiving copayments and deductibles; and

2. violation of the False Claims Act by submitting or causing to be submitted claims to Medicare that were false or fraudulent through the following actions: upcoding and overbilling Medicare for podiatrist services, including billing Medicare for services not rendered; and over-billing Medicare based on a false representation of the place at which services to nursing home patients were provided.

The conduct described in paragraph (C)(1) and (C)(2) is referred to below as the “Covered Conduct.”

D. SDOH Relators and NDOH Relators are entitled under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement, as defined in Paragraph 1 below, and to Relators’ reasonable expenses, attorneys’ fees and costs.

E. This Settlement Agreement is neither an admission of liability by Mobile Medical nor a concession by the United States that its claims are not well founded.

REPRESENTATIONS

As a material inducement to the other Parties to enter into this Agreement and to consummate the transactions contemplated hereby, the specified Party makes such representations and warranties to the other Parties as indicated below.

A. Mobile Medical represents that it is a corporation incorporated in Ohio and headquartered in Ohio.

B. Mobile Medical has provided financial disclosure statements (“Financial Statements”) to the United States and Mobile Medical represents and warrants that the Financial Statements are true, correct, complete and current. Mobile Medical acknowledges that the settlement reached in this case, and the United States’ agreement to enter this Settlement Agreement, are both based on the Financial Statements, and the representations by Mobile Medical of their accuracy and completeness. Mobile Medical is under a continuing obligation to inform the United States of any material change that may impact its ability to satisfy the terms of this Settlement Agreement within ten (10) calendar days of such a material change.

C. Mobile Medical represents that it currently has the ability to pay its debts as they become due including the debt set forth in this Settlement Agreement.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the foregoing representations and mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Mobile Medical shall pay to the United States the sum of \$4,500,000.00 plus simple interest accruing from the Effective Date of this Agreement at the annual rate of 3% (the "Settlement Amount").

2. Payment of the Settlement Amount shall be made by wire transfer instructions to be provided by the Office of the United States Attorney for the Southern District of Ohio as follows:

- a. Within ten (10) calendar days after the Effective Date of this Agreement, Mobile Medical shall pay the total of \$1,050,000.00 ("Cash Payment").
- b. Mobile Medical shall pay the additional sum of \$3,450,000.00 plus interest at 3% per annum by making equal quarterly payments ("Quarterly Payments") over a period of 60 months pursuant to Schedule A hereto, commencing on January 1, 2016 and concluding with a final payment including accrued interest on or before October 1, 2020.

As part of its submissions to the United States indicating an inability to pay claims-based damages, Mobile Medical projected its gross profit. In the event Mobile Medical's actual gross profit exceeds \$18 million by a minimum of \$50,000.00 in any year while Mobile Medical is making payments under this Agreement, Mobile Medical will expedite the payment schedule

herein by making additional payments of 35% of the additional gross profit amount no later than 30 calendar days after the end of Mobile Medical's fiscal year.

In this Settlement Agreement the phrase "Settlement Amount" means the sum of the Cash Payment and any Quarterly Payments paid or due pursuant to Schedule A hereto.

Mobile Medical can prepay the Settlement Amount at any time without penalty or premium.

3. Mobile Medical shall execute a Consent Judgment for the full Settlement Amount which the United States may immediately file in any relevant jurisdiction.

- a. To the extent the Consent Judgment and the dismissal of the case with prejudice are considered inconsistent or overlapping, the Consent Judgment shall be deemed the operative pleading terminating this case as to the "Covered Conduct" defined in the Settlement Agreement, and defendant and its owners, officers, successors, heirs, agents and other representatives waive any argument that the dismissal vacates, or in any way impacts the enforceability or validity of the Consent Judgment.
- b. The Parties agree that in the event Mobile Medical is in default of its payment obligations, and has not cured the default pursuant to the provisions set forth in paragraph 4, below, the United States may, without further notice to Mobile Medical, file in this action a "Notice of Default." Immediately upon such filing, the dismissal with prejudice of this matter shall be vacated.

c. In the event it becomes necessary for the United States to file a motion pursuant to Fed.R.Civ.P 60(b), or to take any other action to reopen or reinstitute this case for the purpose of vacating the dismissal with prejudice due to default, Mobile Medical and its owners, officers, successors, heirs, agents and other representatives hereby waive any defenses to such action.

4. In the event that Mobile Medical fails to pay any portion of the Cash Payment or any portion of the Quarterly Payments when due, then Mobile Medical (“the Defaulting Party”) shall be in default of its payment obligations (“Default”). The United States will provide written notice (the “Notice”) of the Default to the Defaulting Party. The Notice will be delivered in accordance with Paragraph 25. If the Defaulting Party fails to cure such Default within fifteen (15) Business Days of receiving the Notice, the remaining unpaid balance of the Cash Payment or the Quarterly Payments, as applicable, 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 accrued interest balance). As to the Consent Judgment executed by Mobile Medical as set forth in Paragraph 3, the United States, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to the Defaulting Party by any department, agency, or agent of the United States at the time of Default; (b) collect any unpaid portion 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 (c) of this paragraph, the Defaulting Party 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 it on March 11, 2011. The Defaulting Party agrees not to contest any consent judgment, offset, or any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court. The Defaulting Party shall pay the United States all reasonable costs of collection and enforcement under this paragraph, including reasonable attorneys' fees and expenses.

Notwithstanding the foregoing, in the event of Default as defined above, OIG-HHS may exclude Mobile Medical from participating in all Federal health care programs until Mobile Medical pays the Settlement Amount and reasonable costs as set forth in Paragraph 2, above. OIG-HHS will provide written notice of any such exclusion to Mobile Medical. Mobile Medical 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 Mobile Medical wishes to apply for reinstatement, Mobile Medical must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Mobile Medical will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

5. Conditioned upon the United States receiving the Settlement Amount payments from Mobile Medical, the United States agrees that it shall pay to the SDOH Relators by electronic funds transfer a total of 18% of each such payment received toward the Settlement Amount as soon as feasible after the United States' receipt of such payment. The SDOH and NDOH Relators shall divide those funds pursuant to a separate agreement they have reached.

The United States further agrees to pay to the SDOH Relators 18% of any additional amounts recovered pursuant to the provisions of Paragraph 2 as soon as feasible after the United States' receipt of such amounts, which shall be divided between the NDOH and SDOH relators pursuant to their agreement.

6. Mobile Medical agrees to pay Relators' reasonable attorneys' fees, costs and expenses pursuant to 31 U.S.C. § 3730(d)(1) or otherwise as follows: Mobile Medical will pay at the time it makes its initial payment to the government \$150,000 to the SDOH Relators and \$150,000 to the NDOH Relators (for a total of \$300,000). Thereafter, Mobile Medical will pay SDOH Relators and NDOH Relators \$10,000 per year for 5 years for a total of \$50,000 each, and such payments are to be made by December 31, 2016 continuing through December 31, 2021. In addition to the above, Mobile Medical agrees to pay Relators in the NDOH case \$10,000 total, for settlement of the employment/retaliation claims, to be paid with the initial payment for attorney fees.

7. Subject to the exceptions in Paragraph 10 (concerning excluded claims) below, and conditioned upon the United States receiving full payment of the Settlement Amount and subject to Paragraph 22 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 Mobile Medical 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, including the Federal portion only of Medicaid claims for the Covered Conduct.

8. Conditioned upon the United States receiving full payment of the Settlement Amount and Relators receiving payment set forth in paragraph 6 above, and subject to Paragraph 22 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), Relators, for their heirs, successors, attorneys, agents, and assigns fully and finally release and discharge Mobile Medical and each of its present and former shareholders, officers, directors, attorneys, employees, predecessors, successors, trustees, subsidiaries, parents, agents, assigns, divisions and affiliates (together "Released Parties") from any and all civil, regulatory, and or administrative claims, including any and all claims, claims for relief, actions, rights, causes of action, suits, debts, obligations, liabilities, demands, losses, damages (including treble damages and any civil penalties), punitive damages, costs and expenses of any kind, character or nature whatsoever, existing as of the Effective Date of this Agreement, whether known or unknown, fixed or contingent, in law or in equity, in contract or tort, or under any state or federal statute or regulation, or in common law, or otherwise that Relators may have standing to bring against the Released Parties, as of the Effective Date of this Agreement. This paragraph is intended to be interpreted as a general release on behalf of Relators.

9. In consideration of the obligations of Mobile Medical in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and Mobile Medical, and conditioned upon Mobile Medical's full payment of the Settlement Amount, 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 Mobile Medical under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and

other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 10 (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 Mobile Medical 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 10, below.

10. Notwithstanding the releases given in Paragraphs 7 or 8 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- 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; and
- i. Any liability of individuals.

11. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the payments described in Paragraph 6, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

12. The United States and Relators have relied on the accuracy and completeness of the Financial Statements and on the representations made in this Agreement. If the United States learns of material asset(s) in which Mobile Medical had an interest at the time of the submission of the Financial Statements that were not disclosed in the Financial Statements, or if the United States learns of any material misrepresentation by Mobile Medical on, or in connection with, the Financial Statements, or on, or in connection with, this Agreement, including the exhibits to this agreement, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by Twenty-Five Thousand Dollars (\$25,000.00) 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 Mobile Medical previously undisclosed. Mobile Medical 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. If the United States opts to let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Mobile Medical, then the United States agrees to pay the SDOH Relators a total of 18% of any additional amounts actually collected by electronic funds as soon as feasible after the United States' receipt of such amounts; that amount will be divided between the NDOH and SDOH Relators pursuant to their agreement.

13. In the event that the United States, pursuant to Paragraph 12, above, opts to rescind this Agreement, Mobile Medical 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 90 calendar days of written notification to Mobile Medical that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on December 13, 2010.

14. Mobile Medical 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 United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

15. Mobile Medical fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses

of every kind and however denominated) that it asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

16. Mobile Medical fully and finally releases Relators from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that it asserted, could have asserted, or may assert in the future against Relators, related to the Civil Actions or the Covered Conduct and the Relators' investigation and prosecution thereof.

17. 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) related to the Covered Conduct; and Mobile Medical agrees not to resubmit to any Medicare contractor any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

18. Although it is not presently required to file a Cost Report, Mobile Medical 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 Mobile Medical and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and any agreement(s) arising from the criminal investigation of the Covered Conduct;
- (2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) Mobile Medical's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement and any agreements arising from the criminal investigation of the Covered Conduct; and
- (5) the Settlement Amount to be paid to the United States pursuant to this Agreement and any payments that Mobile Medical may make to Relators, including costs and attorney's fees,

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

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Mobile Medical,

and Mobile Medical 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 Mobile Medical or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: Mobile Medical 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 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 Mobile Medical 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. Mobile Medical agrees that the United States, at a minimum, shall be entitled to recoup from Mobile Medical 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 federal or state agencies. The United States reserve its rights to disagree with any calculations submitted by Mobile Medical or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Mobile Medical's 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 Mobile Medical's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

19. Mobile Medical agrees to cooperate fully and truthfully with the United States' investigation of any and all individuals and entities not released in this Agreement. Upon reasonable notice, Mobile Medical shall encourage, and agrees not to impair, the cooperation of its owners, directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former owners, directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Mobile Medical

further 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 another on its behalf.

20. 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 21 (waiver for beneficiaries paragraph), below.

21. Mobile Medical 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.

22. Mobile Medical warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 USC §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent 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 Mobile Medical, 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 X was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

23. If within 91 days of the Effective Date of this Agreement or of any payment made hereunder Mobile Medical 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 Mobile Medical's debts, or seeking to adjudicate Mobile Medical as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Mobile Medical or for all or any substantial part of Mobile Medical's assets, Mobile Medical agrees as follows:

- a. Mobile Medical's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Mobile Medical shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Mobile Medical's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Mobile Medical 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 Mobile Medical.
- b. If Mobile Medical'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 Mobile Medical for the claims that would

otherwise be covered by the releases provided in Paragraphs 7, 8 and 9, above Mobile Medical agrees that (i) any such claims, actions, or proceedings brought by the United States 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 Mobile Medical shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Mobile Medical 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 120 calendar days of written notification to Mobile Medical that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on December 13, 2010; and (iii) the United States has a valid claim against Mobile Medical in the amount of \$13,500,000.00 plus interest, and the United States may pursue its claims, including applicable civil penalties, 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. Mobile Medical acknowledges that its agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

24. Upon receipt of the payment described in Paragraph 2(a), above, the Parties shall, pursuant to Fed. R. Civ. P. 41(a), promptly sign and file in the Civil Action the Joint Stipulation of Dismissal with prejudice. As to the United States, the stipulation shall state the case is dismissed with prejudice as to the Covered Conduct, and without prejudice as to all other matters. The Court shall retain jurisdiction to enforce the terms of this agreement, and Mobile Medical, Relators, and the United States each acknowledge and consent to the Court reopening the case to enforce the terms of this agreement in the event of any default hereunder. The parties acknowledge that the N.D. Ohio matter, Case No. [REDACTED], shall remain pending under seal as to other defendants, and that they are under a continuing obligation to preserve that seal, until such time as a court order is issued unsealing the case.

25. Except as provided in Paragraphs 6 and 12, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

26. Unless otherwise set forth above, all notices, demands and other communications hereunder shall be valid only if made in writing and delivered by one of the following means to the recipients and addresses indicated or to such other recipient and address as any Party may designate by notice in accordance with the provisions of this Section: (a) by hand, (b) by overnight delivery service, e.g. FedEx, Express Mail, UPS, or (c) registered or certified mail.

If to the United States:

United States Attorney's Office
Southern District of Ohio
Attention: Financial Litigation Unit and Craig Black
303 Marconi Blvd., Suite 200
Columbus, OH 43215

If to Mobile Medical:

Stephen G. Sozio, Esq.
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114

If to Relators:

Patrick M. Hagan, Esq.
Vorys Sater Seymour and Pease
301 East Fourth Street, Suite 3500
Great American Tower
Cincinnati, OH 45202

Warner Mendenhall, Esq.
190 N. Union St., Suite 201
Akron, OH 44304

Alyssa M. Allen, Esq.
P.O. Box 39631
Solon, OH 44139

27. 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.

28. This Agreement is governed by the laws of the United States. Mobile Medical hereby irrevocably and unconditionally (i) submits for itself and its property in any legal action or proceeding relating to this Agreement or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive jurisdiction of the United States District Courts for the Southern and Northern Districts of Ohio and courts having jurisdiction over any appeals therefrom; (ii) consents that any such action or proceeding may be brought in any such court and waives any objection that it may now or hereafter have to the venue of any such action or

proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same; (iii) agrees that service of process in any such action or proceeding may be effected in accordance with the provisions in Paragraph 25; and (iv) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction. 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.

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

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

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

32. This Agreement is binding on Mobile Medical's successors, transferees, heirs, and assigns.

33. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

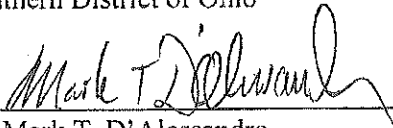
34. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

THE UNITED STATES OF AMERICA


Mark T. D'Alessandro
First Assistant United States Attorney
Southern District of Ohio

DATED: 12/14/15

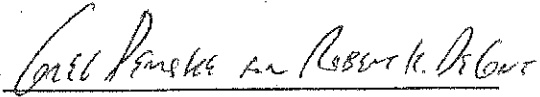
By: 
Mark T. D'Alessandro
First Assistant United States Attorney
Andrew M. Malek
Assistant United States Attorney

Carole S. Rendon
First Assistant United States Attorney
Northern District of Ohio

DATED: _____

By: 
Michelle L. Heyer
Assistant United States Attorney

DATED: 12/14/15

By: 
Robert K. Deconti
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

MOBILE MEDICAL, INC.

DATED: 12/9/2015

By:


Print Name Andrew Foltz

DATED: 12/9/15

By:


Stephen G. Sozio
Counsel for Mobile Medical, Inc.

25 24 mlr

RELATORS

DATED: _____

By: _____
Richard Brown


DATED: _____

By: _____
Cynthia Brown

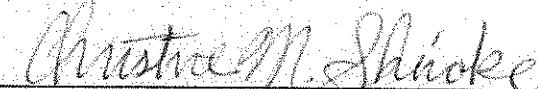
DATED: _____

By: _____
Patrick M. Hagan
Counsel for Richard Brown and
Cynthia Brown

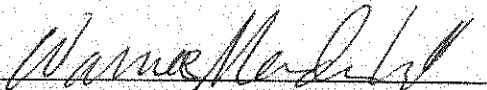
DATED: 12-7-2015

By: 
Barbara Petkovic

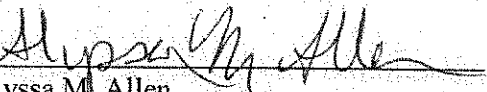
DATED: 12-7-15

By: 
Christine Shiroke

DATED: 12-7-15

By: 
Warner Mendenhall
Counsel for Barbara Petkovic and
Christine Shiroke

DATED: 12-7-2015

By: 
Alyssa M. Allen
Counsel for Barbara Petkovic and
Christine Shiroke

RELATORS

DATED: 12-8-15

By: Richard Brown
Richard Brown

DATED: 12-8-15

By: Cynthia Brown
Cynthia Brown

DATED: 12/15/15

By: Pat M J
Patrick M. Hagan
Counsel for Richard Brown and
Cynthia Brown

DATED: _____

By: _____
Barbara Petkovic

DATED: _____

By: _____
Christine Shiroke

DATED: _____

By: _____
Warner Mendenhall
Counsel for Barbara Petkovic and
Christine Shiroke

DATED: _____

By: _____
Alyssa M. Allen
Counsel for Barbara Petkovic and
Christine Shiroke