

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,
ex rel. JENNIFER HUDNALL,
Relator, and the STATE OF TEXAS
Plaintiffs,

v.

CASE NO. 3-01 CV 1154-K

RESCARE, INC.
d/b/a Educare Community Living Corp.,
Educare Community Living - Normal
Life, Inc., Educare Community Living
- Texas Living Centers, Inc.,
Educare Community Living Corp. Texas,
Educare Community Living Corp. -
America and Educare
and others unknown

Honorable Ed Kinkeade

Defendants

FINAL SETTLEMENT AGREEMENT AND RELEASE

Part I: Parties

This Final Settlement Agreement and Release (“Agreement”) is entered into by and between the State of Texas, acting through the Office of the Attorney General (“State”), the United States of America, acting through the United States Department of Justice (“United States”) and Jennifer Silver-Hudnall (“Relator”) (collectively “Plaintiffs”), and Defendants The Citadel Group, Inc., ResCare, Inc., Educare Community Living Corporation–America, Educare Community Living Corporation–Gulf Coast, Educare Community Living Corporation–Texas, Educare Community Living–Texas Living Centers, Inc. d/b/a Texas Living Centers, Educare Community

Living–Normal Life, Inc., Educare Community Living Limited Partnership d/b/a Alternative Business Services and formerly known as Texas Community Alternatives Limited Partnership, Community Alternatives Texas Partner, Inc., Educare Community Living Corporation-Normal Life, Inc., Educare Community Living Limited Partnership (“Educare entities”), and Texas Home Management, Inc. (collectively “Defendants”). The Plaintiffs and Defendants are referred to collectively as the “Parties.”

Part II: Preamble

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

A. The Citadel Group, Inc. (“Citadel”) is a corporation that operated facilities throughout the State of Texas at all times relevant to this lawsuit, including in Fort Worth and Dallas. Citadel is a subsidiary of Educare Community Living Corporation-America. Educare Community Living Corporation-America is a subsidiary of PeopleServe, Inc., which is a subsidiary of ResCare, Inc.

B. On June 18, 2001, Relator Jennifer Hudnall, filed suit, under seal, on behalf of herself, the United States and the State of Texas ("the State"), against Defendants alleging claims under the Federal False Claims Act (“FCA”), 31 U.S.C. §§3729 - 3733, the Texas Medicaid Fraud Prevention Act, TEX. HUM. RES. CODE ANN. chapter 36 (the “Texas Act”), 18 U.S.C. § 286, 18 U.S.C. § 371, and Texas common law (hereinafter referred to as *Qui Tam* Complaint). The relator’s allegations are set forth more particularly in the *Qui Tam* Complaint, which is attached hereto and incorporated herein as Exhibit A.

C. After investigating the relator's claims, the United States chose not to intervene and filed a notice of non-intervention in the case. As authorized under the FCA, the Relator continued to pursue the action on behalf of the United States as well as individually. On or about June 18, 2003, the Court issued an order unsealing the *Qui Tam* Complaint in its entirety.

D. On or about May 16, 2003, the State filed its own complaint, under seal, against Defendants alleging claims under the Texas Act and under Texas common law for alleged unlawful actions taken by Defendants. The State subsequently amended its complaint, once on December 4, 2003 and again on October 26, 2004. The State of Texas' Second Amended Complaint (hereinafter referred to as the State's Complaint) is attached hereto and incorporated herein as Exhibit B.

E. Defendants denied the allegations and contentions in the *Qui Tam* Complaint and the State's Complaint, and contend that the claims asserted by the Relator and State of Texas lacked legal and factual merit.

F. The *Qui Tam* Complaint and the State's Second Amended Complaint each allege various claims against Defendants. For purposes of this Agreement only, the following claims shall be referred to as the "Covered Claims": 1) the preparation of false progress notes used to bill the Medicaid Program for parties and actions without the proper consumer-trainer ratio, which are unreimbursable activities; 2) the preparation of progress notes during small group classes, which time should have been used for training and instruction; and 3) the preparation of false progress notes used to bill the Medicaid

Program for consumers who did not both attend and participate in class, which is not a reimbursable activity. All other claims identified in the *Qui Tam* Complaint filed by Relator or the State's Second Amended Complaint shall be referred to as the "Other Claims".

G. For purposes of this Agreement, Covered Claims refers only to claims arising between January 1, 2000, and November 6, 2002, and is limited to conduct occurring only at Citadel's Ft. Worth facility.

H. Neither this Agreement as a whole, nor any provision or statement within this Agreement, constitutes an admission of any wrongful conduct by Defendants, admission of liability, or concession of any legal or factual issue raised in the *Qui Tam* Complaint or State's Complaint.

I. To avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the *Qui Tam* Complaint and/or the State's Complaint, the Parties have reached a full and final settlement pursuant to the Terms and Conditions below.

J. Plaintiffs represent to Defendants that no interest in any claim herein released has been assigned by them to any third party except that Relator has signed a written contract with her attorneys which contains a partial assignment of interest in this case to her attorneys.

K. The State has concluded that this Agreement is in the public interest.

L. The Relator agrees that the settlement of the claims in the *Qui Tam* Complaint is fair, adequate, and reasonable under all the circumstances, pursuant to 31

U.S.C. § 3730(c)(2)(B). The Relator also represents and warrants that she has filed no other legal action against any or all of the Defendants, is not contemplating filing any other legal action against any or all of the Defendants, and is not assisting the State of Texas in any investigation of any or all of the Defendants, other than the alleged conduct described in the *Qui Tam* Complaint and the State's Complaint, and the investigation and prosecution thereof.

M. The United States gives its consent to the Settlement Agreement and dismissal of the *Qui Tam* Complaint with prejudice to the Relator and with prejudice to the United States for the Covered Claims, but without prejudice to the United States for the Other Claims.

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Part III: Terms and Conditions

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

The Settlement Payment

1) The Citadel Group, Inc., on behalf of all Defendants, agrees to pay the United States, the State of Texas, and Relator collectively the sum of Two Million One Hundred Fifty Thousand Dollars (\$2,150,000.00) (the “Settlement Amount”), as follows:

a) The Citadel Group, Inc., on behalf of all Defendants, shall pay the United States the sum of \$405,086 (Federal Share), by electronic funds transfer pursuant to written instructions to be provided by counsel for the United States. Contingent upon the United States receiving the Federal Share, and as soon as feasible after receipt, the United States agrees to pay Relator, through her counsel of record, the sum of \$109,373 by electronic funds transfer pursuant to written instructions to be provided by counsel for relator.

b) The Citadel Group, Inc., on behalf of all Defendants, shall pay the State of Texas the sum of \$1,020,058, consisting of \$270,058 (State Share) plus \$750,000 for legal fees, court costs, and litigation expenses, by electronic funds transfer pursuant to written instructions to be provided by counsel for the State of Texas. Contingent upon the State of Texas receiving the State Share, and as soon

as feasible after receipt, the State of Texas agrees to pay Relator, through her counsel of record, the sum of \$59,413 by electronic funds transfer pursuant to written instructions to be provided by counsel for relator.

c) The Citadel Group, Inc., on behalf of all Defendants, shall pay Relator and her counsel of record, the firm of Miller, Alfano, & Raspanti, the sum of \$724,856, consisting of \$99,856 for Relator's wrongful termination claims and \$625,000 for legal fees, court costs and litigation expenses, by electronic funds transfer pursuant to written instructions to be provided by counsel for Relator.

d) The Citadel Group, Inc., on behalf of all Defendants, agrees to make the electronic funds transfers described above not later than 5:00 p.m. (Central Daylight Time) of the third business day after the Court signs the Stipulation and Orders of Dismissal and Order of Dismissal With Prejudice (Exhibits C and D) as set forth in Paragraph 16 of this Agreement.

Plaintiffs: Release of Defendants

2) State Release: Subject to the exceptions in Paragraph III(10) below, in consideration of the obligations of Defendants set forth in this Agreement, and conditioned upon receipt of Defendants' payment in full of the Settlement Amount specified herein, the State (on behalf of itself, its officers, agents, agencies, departments or any instrumentality thereof), agrees to fully and finally release Defendants, their affiliates, subsidiaries, predecessors, successors and assigns as well as their respective current and former directors, officers, employees, agents,

shareholders, servants and attorneys (collectively, the “State Released Parties”) from any civil or administrative claim, action, suit, cause of action or proceeding of any nature whatsoever (including without limitation any claim, action, suit, cause of action or proceeding for attorneys fees, penalties, punitive damages, costs, and expenses of every kind and however denominated) the State has or could have asserted or may have or could assert in the future under any source of law, federal and state, for the alleged conduct described in the *Qui Tam* Complaint and the State’s Complaint, occurring at Citadel’s Fort Worth and Dallas facilities, including without limitation, liability under the Texas Act, FCA and any other federal or state law creating causes of action for civil damages or civil penalties, liability under common-law principles, including but not limited to, liability under a claim for unjust enrichment, payment under mistake of fact, fraud, negligent misrepresentation, disgorgement of illegal profits and recoupment. The payment of this Settlement Amount fully releases and discharges Defendants from any civil or administrative obligation to the State for the alleged conduct described in the *Qui Tam* Complaint and the State’s Complaint. The scope of the release given by the State does not in any way expand or limit the scope of the release given by the United States.

- 3) United States Release: Subject to the exceptions in Paragraph III(10) below, in consideration of the obligations of Defendants set forth in this Agreement, and conditioned upon Defendants’ payment in full of the Settlement Amount specified

herein, and subject to Paragraph III(14) below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, departments) agrees to release Defendants and their respective current and former directors, officers, employees, agents, shareholders, servants and attorneys from any from any civil or administrative monetary claim the United States has or may have for the Covered Claims under the False Claims Act, 31 U.S.C. §§ 3729-3733. The scope of the release given by the United States does not in any way expand or limit the scope of the release given by the State of Texas or Relator.

4) Relator Release.

(a) Further in consideration of the Settlement Amount, Relator, for herself, the United States, her heirs, successors, attorneys, agents, representatives and those in privity with her, fully and finally releases Defendants, their affiliates, subsidiaries, predecessors, successors and assigns as well as their respective current and former directors, officers, supervisors, employees, agents, shareholders, servants, insurance carriers (including but not limited to worker compensation carriers, liability carriers and health insurance carriers), benefit plans and plan administrators, and attorneys (collectively, the “Relator Released Parties”) from any and all civil claims, action, suit, cause of action or proceeding of any nature whatsoever (including without limitation any claim, action, suit, cause of action or

proceeding for attorneys fees, penalties, punitive damages, costs, and expenses of every kind and however denominated) the Relator has or could have asserted or may have or could assert in the future for the alleged conduct described in the *Qui Tam* Complaint and the State's Complaint at law and in equity arising out of the laws of the State of Texas, the United States or any other jurisdiction including but not limited to any statutory or common law claims of wrongful discharge, wrongful termination or retaliation in the workplace, libel, slander, invasion of privacy, any claim of physical or mental anguish or aggravation, whether negligently or intentionally inflicted, and all claims for money damages including those of personal wage loss, loss of earning capacity, any other federal or state law creating causes of action for civil damages or civil penalties, including but not limited to, liability under a claim for unjust enrichment, payment under mistake of fact, fraud, negligent misrepresentation, disgorgement of illegal profits and recoupment or other economic losses of every kind and nature, whether now known or not and whether same should arise in the future. The payment of this Settlement Amount fully and finally discharges the Relator Released Parties, whether or not a named defendant in this litigation, from any civil or administrative obligations of every kind and character which have been claimed, or could have been claimed by the relator or her attorneys, now or in the future for the alleged conduct described in the *Qui Tam* Complaint and the State's

Complaint. The scope of the release given by the Relator does not in any way expand or limit the scope of the release given by the United States.

(b) Conditioned upon receipt of her Relator's share as set forth in Paragraph III, Relator for herself individually, and for her heirs, successors, agents and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d)(1), from any claims arising from the filing of the Qui Tam Complaint, and from any other claims for a share of the Settlement Amount, and in full settlement of any claims Relator may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims under this Agreement.

(c) Conditioned upon receipt of her Relator's share, Relator for herself individually, and for her heirs, successors, agents and assigns, fully and finally releases, waives, and forever discharges the State of Texas, its officers, agents, and employees, from any claims arising from or relating to the Texas Medicaid Fraud Prevention Act arising from the filing of the *Qui Tam* Complaint, and from any other claims for a share of the Settlement Amount, and in full settlement of any claims Relator may have under this Agreement.

- 5) Defendants agree to waive and not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Claims 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. Defendants agree that this Agreement is not punitive in purpose or effect. 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.

Defendants: Release of the United States, the State and the Relator

- 6) Defendants fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the allegations in the Qui Tam Complaint and the United States' investigation thereof.
- 7) Defendants fully and finally release the State of Texas, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Defendants have asserted, could have asserted, or may assert in the future against the State of Texas, its agencies, employees, servants, and agents, related to the alleged conduct

described in the *Qui Tam* Complaint and the State's Complaint and prosecution thereof (the "Defendant Released Parties"). As an express condition of this release by Defendants, the Civil Medicaid Fraud Section of the Texas Attorney General's office ("CMF Section") and the Medicaid Fraud Control Unit of the Texas Attorney General's office ("MFCU") have provided the Defendants with letters of intent (the "Cold Comfort" letters). The Cold Comfort letters expressly represent CMF Section's and MFCU's intent regarding any actions that might be taken against Defendants. It is agreed that if the representations in the Cold Comfort letters prove false as of the effective date of this Agreement, the release contained in this paragraph shall be null and void. The Parties acknowledge that the State's representations in this paragraph do not and are not intended to encompass any *qui tam* complaint currently under seal pursuant to 31 U.S.C. § 3730(b)(2).

- 8) As additional consideration for this Settlement Agreement, Defendants fully and finally release the Relator, her family members, employees, servants, attorneys and agents from any claims which Defendants have asserted, could have asserted, or may assert in the future against Relator, her family members, employees, servants, representatives, attorneys and agents related to the alleged conduct described in the *Qui Tam* Complaint and the State's Complaint and prosecution thereof (the "Defendant Released Parties"). As an express condition of this release by Defendants, Relator expressly warrants that Relator, her family members, employees, servants, representatives, attorneys and agents are unaware of any

actual, alleged, or potential wrongdoing by Defendants, its current and former employees, servants, or agents, other than the alleged conduct described in the *Qui Tam* Complaint and the State's Complaint, and the investigation and prosecution thereof, which might form the basis of any claim against Defendants, its current and former employees, servants, or agents. If Relator or her family members, employees, servants, attorneys or agents bring or cause to be brought any action against Defendants that relies in any way upon information known or reasonably available to Relator or her family members, employees, servants, attorneys, or agents as of the effective date of this Agreement, the release contained in this paragraph shall be null and void.

9) Defendants agree to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

(1) the matters covered by this Agreement,

(2) the United States' and the State's audit(s) and civil investigation(s) of the matters covered by this Agreement,

(3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' and/or the State'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 defendants make pursuant to this Agreement and any payments that defendants may make to Relator, including costs and attorneys fees.

- b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Defendants and Defendants 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 Defendants or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHB Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree 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, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) including 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 defendants 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. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendants or any of their subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Defendants' 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 United States to audit, examine, or re-examine Defendants' books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

Limitations on Release

- 10) Notwithstanding any term of this Agreement, including the release provisions in Paragraphs III(2)-III(6), specifically reserved and excluded from the scope and terms of this Agreement, and from the scope and terms of the releases given by the State and the United States, are any and all of the following:
- (a) Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
 - (b) Any criminal liability;
 - (c) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion, from Federal health care programs;
 - (d) Any liability to the United States (or its agencies) for any conduct other than the Covered Claims;
 - (e) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Claims;
 - (f) Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Defendants) who receive written notification that they are the target of a criminal investigation (as

defined in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Claims;

(g) Any liability based upon such obligations as are created by this Agreement;

(h) The subrogation rights to claims for personal injury or property damage arising from usage by a participant in the Medicaid program of any services covered by the Medicaid program.

No Waiver or Release of Claims Against Other Persons

11) This Agreement is intended to be solely for the benefit of the Parties and the Relator Released Parties, the State Released Parties, the United States Released Parties and the Defendant Released Parties, and except as stated herein, the Parties do not by this instrument release any claims against any other person or entity. No word, term, phrase, or definition in this Agreement is or may be used for the benefit of any person, entity, or litigant who is not a signatory to, or released by this Agreement. Other than payment of the consideration specifically stated herein, there are no other duties or obligations imposed.

Defendants' Waiver of Claims Against Beneficiaries

12) Defendants agree to waive and not seek the right to receive future payment for any of the unbilled 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.

The Parties acknowledge and agree that nothing in this Paragraph or Agreement precludes Defendants from seeking or receiving payment for any health care billings which have been previously billed, but only to the extent such billings do not involve the conduct described in the *Qui Tam* Complaint and the State's Complaint.

Defendants' Representation Regarding its Financial Condition

- 13) Defendants warrant that they have reviewed their financial situation and that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following payment 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 Defendants, 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 and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Defendants were 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 hereunder, any Defendant 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 Defendants' debts, or seeking to adjudicate Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendants or for all or any substantial part of Defendants' assets, Defendants agree as follows:

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

(b) If Defendants' 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, State of Texas, and Relator at their option, may rescind their respective releases in this Agreement, and may bring any civil and/or administrative claim, action, or proceeding against the Defendants for the claims that would otherwise be covered by the releases provided in this Agreement. Defendants agree that (i) any such claims, actions, or proceedings

brought by the United States (including any proceedings to exclude Defendants from participating in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that Defendants will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Defendants will 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 which are brought by the United States (or its agencies and Departments) within 30 calendar days of written notification to Defendants that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on June 18, 2001; and (iii) the United States, State of Texas and Relator have a valid claim against Defendants in the aggregate amount of \$2,150,000.00 (the amount of United States, State of Texas and Relator's separate claims is set forth in Paragraph III(1)(b) of this Agreement), and the United States, State of Texas or Relator may pursue a 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) Defendants acknowledge that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

No Decrease in Settlement Amount

- 15) The Settlement Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment by a federal or state payor, related to the Covered Claims; and Defendants shall not resubmit to any federal or state payor any previously denied claims related to the Covered Claims, and shall not appeal any such denials of claims.

Dismissal of Action

- 16) Upon the State's receipt of (a) the Agreement executed by Defendants and their respective counsel, and (b) the Stipulation and Orders of Dismissal With Prejudice executed by Defendants' counsel (see forms attached as Exhibit C), counsel for the State and the Relator shall execute and file the Stipulation and Order of Dismissal With Prejudice with the United States District Court for the Northern District of Texas, Dallas Division, seeking dismissal with prejudice of all claims asserted in the *Qui Tam* Complaint and the State's Complaint. The United States shall execute and file a separate Order of Dismissal With Prejudice to only Covered Claims, but without prejudice to all Other Claims (see form attached as Exhibit D).

No Impairment or Creation of Rights

- 17) Nothing in this Agreement shall be construed to abrogate or alter any future obligation of Defendants pursuant to the laws of the State of Texas or the United States.

Exclusive Venue for Enforcement of Agreement

- 18) This Agreement shall be enforceable, by any of the Parties against any of the Parties, in the United States District Court for the Northern District of Texas, Dallas Division (“the Court”), which shall have and retain exclusive jurisdiction and venue over any such action, including but not limited to enforcement of this Agreement pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994).

Complete Agreement

- 19) This Agreement, including all exhibits, constitutes the complete agreement between the Parties and may not be amended except by written consent of the Parties.

Costs

- 20) Except as otherwise provided herein, each Party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement. The State of Texas and Defendants have agreed to split the cost (on a 50-50 basis) incurred by Defendants regarding the imaging of certain documents. The total charges incurred by Defendants for the imaging of the documents totals Seventeen Thousand Fifty-Two Dollars and Fourteen Cents (\$17,052.14). As such, the State of Texas and Defendants agree that the State of Texas owes and shall remit to Defendants Eight Thousand, Five Hundred Twenty-Six Dollars and Seven Cents (\$8,526.07),

representing its one-half of the total costs incurred by Defendants. The State of Texas and Defendants agree that this amount is not part of and is not included in any part of the Settlement Funds. The State will remit to the Defendant the sum of Eight Thousand Five Hundred Twenty-Six Dollars and Seven Cents (\$8,526.07) within seven (7) business days following the date it receives the State's share referred to above in Part III, paragraph 1.

Disposition of Documents Subject to HIPAA: Scanned images and hard copies.

- 21) The parties agree that it is appropriate to provide for the protection of documents containing "protected health information" as defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), that were produced during the course of the Lawsuit. Within 90 days after the Orders of Dismissal With Prejudice are entered by the Court, any party that received said documents containing protected health information shall return to the producing party or destroy all copies of such in its possession, custody or control, along with an affidavit attesting to the return or destruction of all said documents. Attorney work-product or other derivative works (such as briefs, affidavits, and pleadings) that embody or reference protected health information shall be kept confidential in order to protect the referenced protected health information. The confidentiality of attorney work-product will remain protected under this Agreement.

Choice of Law

22) This Agreement is governed by the laws of the United States and the laws of the State of Texas, except to the extent otherwise governed by federal law.

Effective Date

23) The Effective Date of this Agreement shall be the date upon which all of the Parties below have executed this Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

Notification

24) Unless otherwise stated in writing subsequent to the Effective Date of this Agreement, all notifications and communications made pursuant to this Agreement shall be submitted to the entities listed below:

(a) UNITED STATES for all purposes:

Sanjay Bhambhani
U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION
601 D Street, N.W., PHB Room 9707
Washington, D.C. 20530

(b) STATE for all purposes:

Lara L. Silva, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
Antitrust & Civil Medicaid Fraud Division
P O Box 12548
Austin, Texas 78711-2548

(c) RELATOR for all purposes:

Marc S. Raspanti, Esq.
Michael A. Morse, Esq.
MILLER, ALFANO & RASPANTI, P.C.
1818 Market Street, Suite 3402
Philadelphia, PA 19103

John H. Cochran, Esq.
COCHRAN & COCHRAN P.C.
100 Harborview Drive, PH3C
Baltimore, MD 21230

(d) Defendants, ResCare, Inc., The Citadel Group, Inc., the Educare entities, and Texas Home Management, Inc. for all purposes:

Thomas M. Melsheimer
William B. Mateja
Victor C. Johnson
Natalie L. Arbaugh
FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, TX 75201

Defendants: No Duress

25) All parties represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

Relator: Agreement Reasonable

26) The Relator agrees that this Agreement and the settlement of the claims in the *Qui Tam* Complaint is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

Authorization

27) The Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their respective signatures. The undersigned individuals signing this Agreement on behalf of Defendants represent and warrant that they are authorized by Defendants to execute this Agreement. The undersigned State and United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement. Relator represents and warrants that she is authorized to execute this Agreement. Relator's counsel represents and warrants that he is authorized to execute this agreement.

No Other Representations or Promises

28) The Parties represent and acknowledge that in entering into this Agreement they are not relying on any promises or representations other than those expressly set forth in this Agreement and its exhibits.

Counterparts

29) This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall be deemed to constitute one and the same Agreement.

Acts Necessary to Effectuate Agreement

30) Each Party agrees to perform such further acts and to execute and to deliver such further documents as may reasonably be necessary to carry out this Agreement.

Captions Are for Convenience Only

31) The bold face paragraph captions in this Agreement are for convenience only and do not add to, detract from or change the substantive language or terms of this Agreement.

Severability Clause

32) If the Court should declare any part of this Agreement invalid or unenforceable for any reason, the remainder of the Agreement shall remain in full force and effect without respect to the invalid provision.

Public Disclosure of Agreement

33) All Parties consent to the disclosure of this Agreement to the public.

[The remainder of this page has intentionally been left blank.]

**STATE of TEXAS
Office of the Attorney General**

By: _____
Lara L. Silva, Esq.
Assistant Attorney General
Antitrust & Civil Medicaid Fraud Division
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Date: _____

**STATE of TEXAS
Health & Human Services Commission**

By: _____
Albert Hawkins, Exec. Commissioner
Health & Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

Date: _____

Relator Jennifer Silver-Hudnall

By: _____
Jennifer Silver Hudnall

Date: _____

APPROVED AS TO FORM:

Marc. S. Raspanti, Esq.
Michael A. Morse, Esq.
Miller, Alfano & Raspanti, P.C.

**Defendant ResCare, Inc., The Citadel
Group, Inc., the Educare entities, and
Texas Home Management, Inc.**

By: _____
Printed Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

Thomas Melsheimer, Esq.
William B. Mateja, Esq.
Victor C. Johnson, Esq.
Natalie L. Arbaugh, Esq.
Fish & Richardson P.C.

**UNITED STATES of AMERICA
Department of Justice**

By: _____
Sanjay Bhambhani, Esq.
U.S. Department of Justice, Civil Division
601 D Street, N.W., PHB Room 9707
Washington, D.C. 20530

Date: _____

