

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Attorney’s Office for the Northern District of California (“USAO”) and the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively, the “United States”), the State of California, acting through the Office of the California Attorney General (“CAG”), and Tranquility Incorporated d/b/a San Miguel Villa (“San Miguel Villa”) (hereafter collectively, with the United States and the State of California, referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. San Miguel Villa is the d/b/a for Tranquility Incorporated and is a nursing home and a for profit corporation located in Concord California. It is licensed to operate in the State of California, and participates in the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.* (“Medicare”), and in Medi-Cal, the California Medicaid Program, 42 U.S.C. § 1396 *et seq.* Tranquility Incorporated is a California corporation based in Concord, California, and is doing business as San Miguel Villa.

B. The United States and the State of California contend that they have certain civil claims against San Miguel Villa based on allegations that San Miguel Villa provided grossly substandard nursing home services to certain Medicare and Medi-Cal beneficiaries who resided at San Miguel Villa from 2012 to 2017, for which San Miguel Villa submitted or caused to be submitted claims for payment to the Medicare and Medi-Cal programs. This conduct is referred to below as the “Covered Conduct.” Among other things, the United States alleges that residents of San Miguel were overmedicated with psychotropic drugs, had excessive falls, resident to resident altercations, and/or suffered other serious mental and physical harm.

C. This Settlement Agreement is neither an admission of liability by San Miguel Villa nor a concession by the United States and the State of California that their 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. San Miguel Villa shall pay to the United States and the State of California two million and three hundred thousand dollars (\$2.3 million) (“Settlement Amount”), of which \$1,864,437.13 constitutes restitution, as follows:

(a) San Miguel Villa agrees to pay to the United States \$1,101,063.36 million, no later than 45 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Northern District of California.

(b) San Miguel Villa agrees to pay the State of California \$1,198,936.64, no later than 45 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the California Office of the Attorney General.

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and subject to Paragraph 5 (concerning disclosure of assets), and Paragraph 12 (concerning bankruptcy) below, and upon the United States’ receipt of the Settlement Amount, the United States releases San Miguel Villa 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 4 below, in consideration of the obligations of San Miguel Villa set forth in this Agreement, and conditioned upon San Miguel Villa's payment in full of the Settlement Amount, the State of California agrees to release San Miguel Villa, together with its officers, agents, servants, directors, parents, subsidiaries, and affiliates, and the successors and assigns of any of them, from any civil or administrative monetary cause of action, under the California False Claims Act, Cal. Gov. Code §§ 12650-12654, or common law theories of payment by mistake, or unjust enrichment, relating to any claims submitted or caused to be submitted to the California Medi-Cal program as a result of the Covered Conduct.

4. Notwithstanding the releases given in Paragraph 2 and 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States and the State of California are specifically reserved and are not released:

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

- g. Any civil or administrative liability that any person or entity, including any released entity, has or may have to the State of California or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in paragraph 3 above; and
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct not expressly covered in paragraph 3 above.

5. On or around September 11, 2020, and July 17, 2021, San Miguel Villa provided sworn financial disclosures and supporting documents (together “Financial Disclosures”) to the United States, and the United States and the State of California have relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. San Miguel Villa warrants that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States and the State of California learn of asset(s) in which San Miguel Villa had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy San Miguel Villa’s obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States and State of California learn of any false statement or misrepresentation by San Miguel Villa on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$65,000 or more, the United States and the State of California may at their option: (a) rescind this Agreement and institute suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of San Miguel Villa’s previously undisclosed assets. San Miguel Villa agrees not to contest any collection action undertaken by the United States and the State of

California pursuant to this provision, and agrees that it will immediately pay the United States and the State of California the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the reasonable attorneys' fees and expenses of the United States and the State of California incurred in such an action. In the event that the United States and the State of California, pursuant to this paragraph, rescinds this Agreement, San Miguel Villa waives and 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 and the State of California within 120 calendar days of written notification to San Miguel Villa that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

6. San Miguel Villa 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.

7. San Miguel Villa fully and finally releases the United States and the State of California, and each of the United States' and California's agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that San Miguel Villa has asserted, could have asserted, or may assert in the future against the United States, the State of California, and the United States' and California's agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' or California's investigation or 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 or Medi-Cal contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier, or any state payer, related to the Covered Conduct; and San Miguel Villa agrees not to resubmit to any Medicare or Medi-Cal contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

9. San Miguel Villa 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of San Miguel Villa, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and the State of California's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) San Miguel Villa's investigation, defense, and corrective actions undertaken in response to the United States' and the State of California's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment San Miguel Villa makes to the United States and the State of California pursuant to this Agreement are unallowable costs for government contracting purposes and under the Medicare Program, Medi-

Cal 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 San Miguel Villa , and San Miguel Villa shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or the State of California 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 San Miguel or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: San Miguel Villa further agrees that within 91 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 the State of California, 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 San Miguel Villa 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. San Miguel Villa agrees that the United States and the State of California, at a minimum, shall be entitled to recoup from San Miguel Villa 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 and the State of California pursuant to the direction of the Department of Justice, the California Attorney General, and/or the affected agencies. The United States and the State of California reserve their rights to disagree with any calculations submitted by San Miguel Villa or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on San Miguel Villa 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 and the State of California to audit, examine, or re-examine San Miguel Villa's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

10. 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 11 (waiver for beneficiaries paragraph), below.

11. San Miguel Villa 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.

12. In exchange for valuable consideration provided in this Agreement, San Miguel Villa acknowledges the following:

a. San Miguel Villa has reviewed its financial situation and warrants that it 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 United States and the State of California of the Settlement Amount.



b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to San Miguel Villa, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

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

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

e. If San Miguel Villa's obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, San Miguel Villa or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of San Miguel Villa's debts, or to adjudicate San Miguel Villa as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for San Miguel Villa or for all or any substantial part of San Miguel Villa's assets:

(i) the United States and the State of California may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against San Miguel Villa for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3 above.

(ii) the United States and the State of California has an undisputed, noncontingent, and liquidated allowed claim against San Miguel Villa in the amount of \$5,593,311.00, less any

payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by San Miguel Villa , a receiver, trustee, custodian, or other similar official for San Miguel Villa;

f. San Miguel Villa agrees that any civil and/or administrative claim, action, or proceeding brought by the United States and the State of California under Paragraph 12.e is not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States’ and the State of California’s police and regulatory power. San Miguel Villa shall not argue or otherwise contend that the United States’ and the State of California’s claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). San Miguel Villa waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States and State of California within 120 days of written notification to San Miguel Villa that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of this Agreement.

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

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

15. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Northern District of California. 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.

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

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

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

19. This Agreement is binding on San Miguel Villa's successors, transferees, heirs, and assigns.

20. All Parties consent to the United States' and the State of California's disclosure of this Agreement, and information about this Agreement, to the public.

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

**THE UNITED STATES OF AMERICA**

STEPHANIE M. HINDS  
United States Attorney  
Northern District of California

DATED: 11/29/22

BY:

*Gioconda molinari*  
GIOCONDA R. MOLINARI  
Assistant United States Attorney  
United States Attorney's Office,  
Northern District of California

DATED: 11/18/22

BY: Lisa M. Re /seg

LISA M. RE

Assistant Inspector General for Legal Affairs

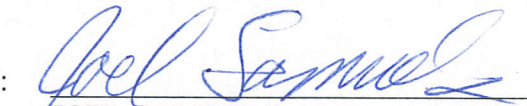
Office of Counsel to the Inspector General

Office of Inspector General

United States Department of Health and Human Services

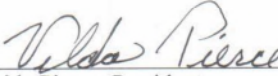
**THE STATE OF CALIFORNIA**

ROB BONTA  
Attorney General of California

DATED: 22 Nov 2022 BY:   
JOEL SAMUELS  
Supervising Deputy Attorney General  
Division of Medi-Cal Fraud and Elder Abuse  
Office of the Attorney General  
California Department of Justice

FOR THE SAN MIGUEL ENTITIES

TRANQUILITY INCORPORATED D/B/A SAN MIGUEL VILLA

DATED: 11/12/22 BY:   
Velda Pierce, President  
Tranquility Inc. d/b/a San Miguel Villa

DATED: 11/14/22 BY:   
Stanton J. Stock  
Counsel for Tranquility Inc. d/b/a San Miguel Villa