

SETTLEMENT AGREEMENT

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

RECITALS

A. James Taggart was the president and an owner of Physicians Pharmacy Alliance, Inc. (hereinafter "PPA"), a corporation that provides pharmacy services, primarily to Medicaid and Medicare patients in North Carolina.

B. James Taggart filed a Chapter 11 Bankruptcy Case, Case No. 16-3321-5-JNC, (hereinafter "Bankruptcy Case") in the Eastern District of North Carolina, on June 24, 2016, and remains under the protection of the Bankruptcy Court.

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

D. The Governments contend that:

1. Between January 1, 2008, and January 4, 2011, James Taggart and others caused gift cards to be provided to patients, physician office employees, and community health center employees in order to induce them to enroll or refer patients to PPA in violation of the Anti-kickback statute, 42 U.S.C. § 1320a-7b; and

2. Between January 1, 2008, and April 30, 2013, James Taggart and others caused copayments to be waived for Medicare and Medicaid beneficiaries who had their prescriptions filled at PPA.

The Governments contend that through the above conduct, James Taggart caused PPA to submit false and fraudulent claims to Medicare and Medicaid in violation of the False Claims Act. This conduct is referred to below as the Covered Conduct.

E. This Settlement Agreement is neither an admission of liability by James Taggart nor a concession by the Governments that their claims are not well founded. James Taggart denies the Governments' allegations in Paragraph D.

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. The Settlement Amount (defined below) shall constitute a debt to and an allowed claim of the Governments within the meaning of 11 U.S.C. § 502. All debts and claims relating to or resulting from the Covered Conduct shall be discharged to the Governments under the following terms and conditions:

a. James Taggart shall pay to the Governments the total sum of \$995,000 ("Settlement Amount"), within 15 days of the Effective Date of the Plan in the Bankruptcy Case, based upon anticipated approval by the Bankruptcy Court, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney for the Eastern District of North Carolina.

b. James Taggart agrees that the Settlement Amount and the debt arising from default for nonpayment on the Governments' claims would be non-dischargeable

pursuant to 11 U.S.C. § 523 and 11 U.S.C. § 1141, but the liability for the Covered Conduct will be dischargeable based upon full payment of the Settlement Amount. The Governments' Adversary Proceeding in the Bankruptcy Case regarding non-dischargeability, AP No. 16-147-5-JNC, shall be dismissed with prejudice upon the later of full payment of the Governments' Settlement Amount or the Effective Date of the Plan.

c. The terms of the Chapter 11 Plan shall be consistent with this Agreement. The Governments' \$995,000 claim shall be classified separately as an Unsecured General Claim, deemed impaired under the Plan, and paid in full under the Plan within 15 days of the Effective Date. The Governments agree to vote to accept a Plan consistent with this Agreement. In addition, in the event of dismissal or conversion of the Bankruptcy Case, voluntary or otherwise, James Taggart and the Governments intend that a Fed. R. Bankr. P. 9019 motion and order relating to this Agreement shall survive said dismissal or conversion. To the extent that any provision of any plan of reorganization conflicts with any provision of the Agreement, the provisions of this Agreement control.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon James Taggart's full payment of the Settlement Amount, the United States releases James Taggart 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, and shall not file a civil action against James Taggart for the Covered Conduct.

3. In consideration of the obligations of James Taggart set forth in this Agreement, conditioned upon James Taggart's full payment of the Settlement Amount, and subject to the

exceptions in Paragraph 4 below, the State of North Carolina releases James Taggart from any civil or administrative monetary claim the State of North Carolina has for the Covered Conduct under the North Carolina False Claims Act, N.C.G.S. § 1-605 et. seq., the North Carolina Medical Assistance Provider False Claims Act, N.C.G.S. § 108A-70.10 et. seq., or the common law theories of payment by mistake, unjust enrichment, and fraud for the Covered Conduct, and shall not file a civil action against James Taggart for the Covered Conduct.

4. Notwithstanding the release given in paragraph 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the Governments 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 or State health care programs;
- d. Any liability to the United States, North Carolina, or their 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; and
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. James Taggart has filed bankruptcy petitions and accompanying schedules (as amended, the "Schedules") in his Bankruptcy Case, and the Governments have relied on the accuracy and completeness of those Schedules in reaching this Agreement. James Taggart warrants that the Schedules are complete, accurate, and current. If the Governments learn of asset(s) in which James Taggart had an interest at the time of this Agreement that were not disclosed in the Schedules, or if the Governments learn of any misrepresentation by him on, or in connection with, the Schedules, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Schedules by \$50,000 or more, the Governments may at their 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. James Taggart agrees not to contest any collection action undertaken by the Governments pursuant to this provision, and immediately to pay the Governments all reasonable costs incurred in such an action, including attorney's fees and expenses.

6. In the event that the Governments, pursuant to Paragraph 5 (concerning disclosure of assets), above, opt to rescind this Agreement, James Taggart 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 Governments within 30 calendar days of written notification to James Taggart that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on April 5, 2017.

7. James Taggart waives and shall not assert any defenses he may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment

of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the Governments concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. James Taggart fully and finally releases the Governments, their agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that he has asserted, could have asserted, or may assert in the future against the Governments, and their agencies, officers, agents, employees, and servants related to the Covered Conduct and the Government investigation and prosecution thereof.

9. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and James Taggart agrees not to resubmit to any Medicare 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.

10. James Taggart 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 PPA, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

- (2) the Governments' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) James Taggart's investigation, defense, and corrective actions undertaken in response to the Governments' audit(s) and civil and any 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
- (5) the payment James Taggart makes to the Governments pursuant to this Agreement,

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

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

c. Treatment of Unallowable Costs Previously Submitted for Payment:
James Taggart 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 James Taggart, 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. James Taggart agrees that the Governments, at a minimum, shall be entitled to recoup from him 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 Governments pursuant to the direction of the Department of Justice, North Carolina Department of Justice, and/or the affected agencies. The Governments reserve their rights to disagree with any calculations submitted by James Taggart on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on his cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the Governments to audit, examine, or re-examine James Taggart's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. James Taggart agrees to cooperate fully and truthfully with the Governments' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, James Taggart shall use his best efforts to make available, and encourage, the cooperation of his former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. James Taggart further agrees to furnish to the Governments, 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 their behalf.

12. 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 13 (waiver for beneficiaries paragraph), below.

13. James Taggart 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.

14. James Taggart agrees to the following in exchange for valuable consideration provided in this agreement:

a. James Taggart's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and James Taggart shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) James Taggart's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) James Taggart became insolvent as a result of the payment made to the Government; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to James Taggart. James Taggart further agrees 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 James Taggart was or became indebted to on or after the date of this transfer, with the meaning of 11 U.S.C. § 548(a)(1).

b. If, in the event that (1) James Taggart defaults on any of his obligations under this Agreement prior to the satisfaction of the Settlement Amount, or (2) any portion of the

Settlement Agreement is avoided for any reason, including, but not limited to, through the exercise of powers granted under 11 U.S.C. §§ 544, 547, 548, 549 or 550, or any other Bankruptcy Code provision or state law provision, by entry of judgment or settlement (defined herein as an "Avoidance Event"), the United States and/or North Carolina, at their sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against James Taggart for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 4 above; however, James Taggart shall be entitled to an offset for any monies already paid to the Governments towards the satisfaction of said amount.

c. If an Avoidance Event occurs or James Taggart'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, and/or North Carolina, at their sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against James Taggart for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 4, above. James Taggart agrees that (i) any such claims, actions, or proceedings brought by the Governments are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) and (b)(4) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and James Taggart shall not argue or otherwise contend that the Governments' claims, actions, or proceedings are subject to an automatic stay; (ii) James Taggart 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 Governments within 30 calendar days of written notification to James Taggart that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on April

5, 2017; and (iii) the Governments may pursue their claims in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

d. The Parties agree that the Bankruptcy Court for the Eastern District of North Carolina and the United States District Court for the Eastern District of North Carolina shall retain concurrent jurisdiction to enforce this Agreement and that any action or proceeding to enforce this Agreement is not subject to the automatic stay of 11 U.S.C. § 362(a).

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

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

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of North Carolina. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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

21. This Agreement is binding on James Taggart's successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: _____

JOHN STUART BRUCE
United States Attorney

BY: _____

NEAL I. FOWLER
Assistant United States Attorney
310 New Bern Avenue
Federal Building, Suite 800
Raleigh, NC 27601-1461
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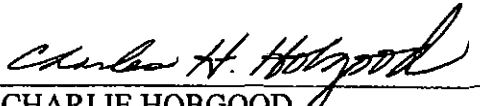
DATED: _____

BY: _____

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 NORTH CAROLINA

DATED: 5/30/2017

BY: 

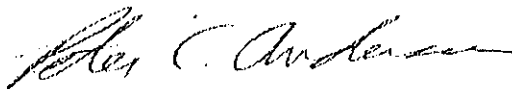
CHARLIE HOBGOOD
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations Division

JAMES TAGGART

DATED: _____

BY: _____
JAMES TAGGART

DATED: 5/22/17

BY: 

PETER C. ANDERSON
Beveridge & Diamond
Counsel for James Taggart

DATED: 5/22/17

BY: 

JOHN NORTHEN
Northen Blue, LLP
Counsel for James Taggart

THE STATE OF NORTH CAROLINA

DATED: _____

BY: _____

CHARLIE HOBGOOD
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations Division

JAMES TAGGART

DATED: May 23, 2017

BY: _____


JAMES TAGGART

DATED: _____

BY: _____

PETE ANDERSON
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DATED: _____

BY: _____

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