

State of North Carolina

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September 2, 2015

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

Senator Stan Bingham
Senator Shirley Randleman
Senator E.S. "Buck" Newton
Representative James Boles, Jr.
Representative Leo Daughtry
Representative John Faircloth
Representative Pat Hurley
Co-Chairs, Appropriations Subcommittee on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

Re: G.S. §114-2.5; Report on Settlement Agreement for Daiichi Sankyo, Inc.; Report on Settlement Agreement for Dr. John Shen/Albemarle Women's Clinic; Report on Settlement Agreement for Pediatric Services of America, Inc.; Report on Settlement Agreement for Cape Fear Regional Urological Clinic, P.A.; Report on Settlement Agreement for Physicians Pharmacy Alliance; Report on Settlement Agreement for Biogen IDEC, Inc.

Dear Members:

G.S. §114-2.5 requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the State and Federal governments in the above-referenced matters. Pursuant to federal law (42 C.F.R. § 433.320) recoveries in these cases are shared on a pro rata basis by the State and Federal governments.

Daiichi Sankyo, Inc.

A Settlement Agreement has been executed between Daiichi Sankyo, Inc. and the State of North Carolina. The settlement resolves allegations that from January 1, 2004 through March 31, 2011, Daiichi Sankyo paid kickbacks to induce physicians to prescribe their drugs. The kickbacks took the form of honoraria payments, meals and other remuneration to physicians who participated in Physician Opinion and Discussion programs.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$281,735.67. Of that amount the federal government will receive \$181,644.22 for North Carolina's federal portion of Medicaid recoveries. Pursuant to G.S. § 1-610, the qui tam plaintiffs whose whistleblower actions brought this matter to the government's attention will receive \$17,897.35 of North Carolina's recovery. The North Carolina Medicaid Program will receive \$40,131.53 as restitution and interest. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$39,469.83 will be paid to the Civil Penalty Forfeiture Fund for the support of North Carolina public schools. Pursuant to G.S. § 115C-457.2 and G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$2,592.74 for investigative costs and costs of collection.

Dr. John Shen/Albemarle Women's Clinic

A Settlement Agreement has been executed between Dr. John Shen/Albemarle Women's Clinic and the State of North Carolina. The settlement resolves allegations that from January 1, 2008 through December 31, 2014, Dr. Shen/Albemarle Women's Clinic performed Detailed Fetal Anatomical Ultrasound Examinations, Biophysical Profile Ultrasounds, and Non-Obstetrical Pelvic Ultrasounds that were not medically necessary.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$975,000.00. Of that amount the federal government will receive \$666,533.89 for North Carolina's federal portion of Medicaid and Medicare recoveries. The North Carolina Medicaid Program will receive \$308,466.11 as restitution. Pursuant to G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$9,809.22 for investigative costs.

Pediatric Services of America, Inc.

A Settlement Agreement has been executed between Pediatric Services of America, Inc. and the State of North Carolina. The settlement resolves allegations that from January 1, 2007 through October 31, 2014, PSA knowingly failed to return overpayments that it received from Medicaid and upcoded by billing one whole hour for home nursing services performed in 30 minutes or less when such a whole hour "rounding up" is only permitted for services that were rendered for 31 minutes or more.

Under the terms of North Carolina's settlement, the State of North Carolina will

recover \$101,693.56. Of that amount the federal government will receive \$69,673.72 for North Carolina's federal portion of Medicaid recoveries. Pursuant to G.S. § 1-610, the qui tam plaintiffs whose whistleblower actions brought this matter to the government's attention will receive \$5,095.16 of North Carolina's recovery. The North Carolina Medicaid Program will receive \$12,736.58 as restitution and interest. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$13,337.47 will be paid to the Civil Penalty Forfeiture Fund for the support of North Carolina public schools. Pursuant to G.S. § 115C-457.2 and G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$412.57 for investigative costs and \$ 438.06 for costs of collection.

Cape Fear Regional Urological Clinic, P.A.

A Settlement Agreement has been executed between Cape Fear Regional Urological Clinic and the State of North Carolina. The settlement resolves allegations that from December 31, 2009 through December 31, 2014, Cape Fear billed improperly, including billing for services without the required direct physician supervision or without the requisite medical professional providing the services.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$470,000. Of that amount the federal government will receive \$467,861.43 for federal health care programs and North Carolina's federal portion of Medicaid recoveries. The North Carolina Medicaid Program will receive \$720.66 as restitution and interest. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$1,349.90 will be paid to the Civil Penalty Forfeiture Fund for the support of North Carolina public schools. Pursuant to G.S. § 115C-457.2 and G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$23.67 for investigative costs and \$ 44.34 for costs of collection.

Physicians Pharmacy Alliance

A Settlement Agreement has been executed between Physicians Pharmacy Alliance and the State of North Carolina. The settlement resolves allegations that from January 1, 2008 through January 4, 2011, PPA provided gift cards to patients, physician office employees, and community health center employees in order to induce them to enroll or refer patients to PPA.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$5,000,000.00. Of that amount the federal government will receive \$3,860,876.17 for federal health care programs and North Carolina's federal portion of Medicaid recoveries. The North Carolina Medicaid Program will receive \$297,174.76 as restitution. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$805,724.93 will be paid to the Civil Penalty Forfeiture Fund for the support of North Carolina public schools. Pursuant to G.S. § 115C-457.2 and G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$9,760.54 for investigative costs

and \$26,463.60 for costs of collection.

Biogen IDEC, Inc.

A Settlement has been executed between Biogen IDEC, Inc. and the State of North Carolina. The settlement resolves allegations that from January 1, 2007 through July 31, 2015, Biogen improperly underpaid its Medicaid Rebate obligations by falsely under-reporting Average Manufacturer Price to Center for Medicare and Medicaid Services.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$75,744.91. Of that amount the federal government will receive \$51,854.42 for North Carolina's federal portion of Medicaid recoveries. Pursuant to G.S. § 1-610, the qui tam plaintiffs whose whistleblower actions brought this matter to the government's attention will receive \$6,450.43 of North Carolina's recovery. The North Carolina Medicaid Program will receive \$16,885.47 as restitution. Pursuant to G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$554.59 for investigative costs.

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

Very truly yours,



Kristi Jones
Chief of Staff

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

STATE SETTLEMENT AGREEMENT

PARTIES

This Settlement Agreement ("Agreement") is entered into between the State of North Carolina ("the State") and Daiichi Sankyo, Inc. ("DSI"), hereinafter collectively referred to as "the Parties."

RECITALS

The Parties agree as follows:

A. At all relevant times, DSI, a Delaware corporation with its principal place of business in Parsippany, New Jersey, distributed, marketed and/or sold pharmaceutical products in the United States, including the drugs Azor, Benicar/Benicar HCT, Tribenzor and Welchol (collectively, the "Subject Drugs").

B. On March 10, 2010, Kathleen Fragoules ("Relator") filed a *qui tam* action in the United States District Court for the District of Massachusetts captioned *United States of America, et al., ex. rel Fragoules v. Daiichi Sankyo, Inc., et. al*, Civil Action No. 10-10420-NG. The following four related *qui tams* actions were subsequently filed and thereafter transferred to the District of Massachusetts and administratively consolidated under the caption *United States ex. rel Fragoules v. Daiichi Sankyo, Inc.*, Civil Action No. 10-10420-FDS:

(i) *United States of America, et al., ex. rel Gramig and Andreozzi, v. Daiichi Sankyo, Inc., et. al* (Civil Action No. 10-cv-01599, USDC D.D.C.);

(ii) *United States of America, et al., ex. rel Reilly v. Daiichi-Sankyo, Inc.* (Civil Action No. 11-cv-0082, USDC W.D. Mich.);

(iii) *United States of America, et al., ex. rel Tun v. Daiichi Sankyo Co., Ltd., et. al*

(Civil Action No. 11-cv-10831, USDC D.Ma.); and

(iv) *United States of America, et al., ex. rel. Bozeman v. Daiichi-Sankyo Co., et. al* (Civil Action No. 2:13-cv-02781, USDC W.D. Tenn.).

These five consolidated cases will be collectively referred to as the "Civil Actions." The complaints filed in the Civil Actions alleged, *inter alia*, that DSI caused false claims to be submitted to government healthcare programs by providing inducements to physicians to prescribe the Subject Drugs in violation of the federal Anti-Kickback Statute (42 U.S.C. §§ 1320a-7b(b)) and analogous state statutes.

C. DSI has entered or will be entering into a separate civil settlement agreement (the "Federal Settlement Agreement") with the United States of America (as that term is defined in the Federal Settlement Agreement), hereinafter referred to as the "United States."

D. The State contends DSI caused claims for payment to be submitted to the State's Medicaid Program (see 42 U.S.C. §§ 1396-1396(v)).

E. The State contends that it has certain civil claims against DSI arising from DSI having caused false claims to be submitted to state Medicaid programs by paying kickbacks to induce physicians to prescribe the Subject Drugs. Specifically, the State contends that the kickbacks took the form of honoraria payments, meals and other remuneration to physicians who participated, or supposedly participated, in Physician Opinion & Discussion programs ("PODs") during the period from January 1, 2005, through March 31, 2011, and other speaker programs during the period from January 1, 2004, through February 4, 2011 (collectively, the "Speaker Programs"). The State contends that the honoraria, meals and other remuneration were kickbacks because DSI

paid physicians who participated in the Speaker Programs even if, among other things: (1) the honoraria recipient spoke only to members of his or her own staff in his or her own office; (2) the physician participants in PODs took turns accepting a "speaker" honoraria for duplicative discussions; (3) the audience included the honoraria recipient's spouse; (4) the honoraria recipient did not speak at all because the event was cancelled beforehand; and/or (5) the associated dinner was so lavish that its cost exceeded DSI's own internal cost limitation of \$140 per person. DSI's Programs and alleged conduct described in this Paragraph E are referred to in the Agreement as the "Covered Conduct."

F. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of liability by DSI nor a concession by the State its claims are not well founded.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the Civil Actions and the above-cited claims, the Parties mutually desire to reach a full and final settlement as set forth below.

TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. DSI agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the sum of \$39,015,770, plus

interest at an annual rate of 2.125% from September 16, 2014, and continuing until and including the day of payment (collectively, the "Settlement Amount"). The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of the Federal Settlement Agreement and subject to the terms of this Agreement. The debt shall be discharged by payments to the United States and the Medicaid Participating States under the following terms and conditions:

(a) DSI shall pay to the United States the principal sum of \$34,015,770, plus accrued interest as set forth above ("Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) DSI shall pay to the Medicaid Participating States the sum of FIVE MILLION DOLLARS (\$5,000,000) plus accrued interest ("Medicaid State Settlement Amount"), subject to the non-participating state deduction provision of sub-paragraph (d) below ("Medicaid Participating State Settlement Amount"), no later than seven (7) business days after the expiration of the sixty (60) day opt-in period for Medicaid Participating States described in sub-paragraph (c) below. The Medicaid Participating State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Negotiating Team ("State Team"), such written instructions to be delivered to counsel for DSI.

(c) DSI shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which DSI and the State Team have agreed,

or in a form otherwise agreed to by DSI and an individual State. The State shall constitute a Medicaid Participating State provided the Agreement is fully executed by the State and delivered to DSI's attorneys within sixty (60) days of receiving this Agreement. If this condition is not satisfied within sixty (60) days, DSI's offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for DSI and the State Team to extend the sixty (60) day period.

(d) The total portion of the amount paid by DSI in settlement for the Covered Conduct for the State is \$281,073.97 consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$99,429.75, plus applicable interest (the "State Amount"). If the State does not execute this Agreement within sixty (60) days of receiving this Settlement Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by DSI absent written agreement between counsel for DSI and the State Team to extend the time period for executing this Agreement.

2. The State agrees to promptly dismiss with prejudice all state law claims which the State has the authority to dismiss currently pending against DSI in State or Federal Courts for the Covered Conduct including any supplemental state law claims asserted in the Civil Actions.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of DSI set forth in this Agreement, and conditioned upon receipt by the State of its share of the Medicaid State Settlement Amount, the State agrees to release DSI, together with its current and former parent corporations, direct and indirect subsidiaries,

brother or sister corporations, affiliates, divisions, current and former owners, directors, officers, agents, insurers and employees, and the predecessors, successors, transferees, heirs, and assigns of any of them, individually and collectively (collectively, the "DSI Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program as a result of the Covered Conduct.

4. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

(a) any criminal, civil, or administrative liability arising under state revenue codes;

(b) any criminal liability not specifically released by this Agreement;

(c) any civil or administrative liability that any person or entity, including any DSI Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

(d) any liability to the State for any conduct other than the Covered Conduct;

(e) any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;

(f) any liability based upon obligations created by this Agreement;

(g) any administrative liability, including mandatory exclusions from the State's Medicaid program, unless explicitly stated in this Agreement;

(h) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by DSI;

(i) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or

(j) any liability based on a failure to deliver goods or services due.

5. In consideration of the obligations of DSI set forth in this Agreement, and the Corporate Integrity Agreement ("CIA") that DSI has entered or will be entering into with the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG") in connection with this matter, and conditioned upon receipt by the State of its share of the State Medicaid Settlement Amount, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against DSI for the Covered Conduct, except as reserved in Paragraph 4 above. Nothing in this Agreement precludes the State from taking action against DSI in the event that DSI is excluded by the federal government, or for conduct and practices other than the Covered Conduct as reserved in Paragraph 4 above.

6. DSI waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment

of the Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. In consideration of the obligations of the State set forth in this Agreement, DSI waives and discharges the State, its agencies, political subdivisions, employees, servants, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which DSI has asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants, and agents, arising from the State's investigation and prosecution of the Covered Conduct.

8. The amount that DSI must pay to the State pursuant to Paragraph 1(d) above will not be decreased as a result of the denial of claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and DSI agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

9. DSI shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

10. DSI expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount and compliance with this Agreement.

11. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

12. DSI agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement. Upon reasonable notice, DSI shall facilitate, and agree not to impair, the cooperation of its directors, officers, employees or agents, for interviews and testimony, consistent with the rights and privileges of such individuals and of DSI. Upon request, DSI agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct. DSI shall be responsible for all costs it may incur in complying with this paragraph.

13. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

15. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

16. In addition to all other payments and responsibilities under this Agreement, DSI agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. DSI will pay this amount by separate

check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

17. This terms of this Agreement are governed by the laws of the State, except disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions of the CIA, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

18. The undersigned DSI signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

19. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

20. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

21. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

STATE OF NORTH CAROLINA

By: Charles H. Hobgood
CHARLES H. HOBGOOD
Director, Medicaid Investigations Division
Office of the Attorney General

Dated: 1/26/2015

By: [Signature]
ROBIN G. CUMMINGS, M.D., Director
Division of Medical Assistance

Dated: 1/26/15

DAIICHI SANKYO, INC.

By: Joseph K. Keller Dated: 3/4/2015

JOSEPH KENNETH KELLER
President, U.S. Commercial
Daiichi Sankyo, Inc.

By: Wendy C. Goldstein Dated: 3/5/2015

WENDY C. GOLDSTEIN
SARAH K. DIFRANCESCA
Cooley LLP
Counsel to Daiichi Sankyo, Inc.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America ("United States"), 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") and the North Carolina Office of the Attorney General (collectively the "Government"); John Shen, M.D.; Gaynelle Brown, R.N. (individually and as an employee and agent of Albemarle Women's Clinic); Albemarle Women's Clinic, P.A., a North Carolina corporation (collectively "AWC"). Each of the above hereafter collectively referred to as "the Parties" through their authorized representatives.

RECITALS

A. AWC provides physician services to clients within the Middle District of North Carolina.

B. The Government contends that during the dates of January 1, 2008 through and including the date of the execution of this Agreement, AWC submitted or caused to be submitted claims for payment to the:

(1) North Carolina Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, in violation of the North Carolina False Claims Act, N.C.G.S. §§ 1-605, *et seq.*, and the Medical Assistance Provider Claims Act, N.C.G.S. §§ 108A-70.10, *et seq.*; and

(2) Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1, *et seq.*

C. The Government contends that it has certain civil claims against AWC arising from the following conduct, during the dates of January 1, 2008 through and including the date of the execution of this Agreement:

(1) AWC's submission of claims to the North Carolina Medicaid Program for Detailed Fetal Anatomical Ultrasound Examinations (CPT 76811) for patients who, the Government contends were not at high risk for fetal abnormality. Additionally, the Government contends and AWC denies that the services provided and documented by AWC did not support billing a detailed study;

(2) AWC's submission of claims to the North Carolina Medicaid Program for Biophysical Profile Ultrasounds (CPT 76818 and 76819), which the Government contends, were not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy;

(3) AWC's submission of claims to the North Carolina Medicaid Program for Non-Obstetrical Pelvic Ultrasounds (CPT 76856, 76830, and 76857), which the Government contends were not medically necessary, were over utilized in instances where there may have been indicia of medical necessity, and/or were billed at an inappropriate level (upcoding); and

(4) AWC's submission of claims to the Medicare Program for urinalysis by dip stick or table reagent with and without microscopy (CPT 81000 and 81002), which the Government contends, were not medical necessary and/or there was no evidence that the service was in fact rendered.

This conduct, as recited above in Paragraphs B and C, is referred to below and throughout this Settlement Agreement as the "Covered Conduct."

D. This Settlement Agreement is neither an admission of liability by AWC nor a concession by the Government that its claims are not well founded. Settlement is for the resolution of disputed claims.

Additionally, AWC denies each and every recital set forth above in this Agreement.

E. 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. AWC shall pay to the Government the aggregate principal amount of nine hundred seventy five thousand dollars (\$975,000.00) (the "Settlement Amount") by electronic funds (wire) transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Middle District of North Carolina. No later than 30 days following the Effective Date of this Agreement, Albemarle Women's Clinic shall pay \$100,000.00 via wire transfer to be credited by the Government towards the Settlement Amount. The remaining principal balance of \$875,000.00 shall be paid by Albemarle Women's Clinic, due by 5:00 pm U.S. Eastern time on the following dates: (a) no later than January 15, 2015, Albemarle Women's Clinic shall pay \$560,000.00 via wire transfer to be credited by the Government toward the Settlement Amount; (b) no later than May 1, 2015, Albemarle Women's Clinic shall pay \$200,000.00 via wire transfer to be credited by the Government toward the Settlement Amount pursuant to the amortization schedule attached as Exhibit A hereto; (c) No later than May 1, 2016, Albemarle Women's Clinic shall pay \$115,000.00 via wire transfer to be credited by the Government toward the Settlement Amount (or if on a weekend or holiday, the next United States business day) (each such day, a "Payment Date") pursuant to the amortization

schedule referenced above until the remaining Settlement Amount is paid in full, (unless the number of payments, final payment date or final payment amount is reduced or the final payment date accelerated by the provisions of this Paragraph 1). Interest payable to the Government shall accrue at an annual rate of 2.75%, and on each Payment Date all interest, computed as 90 days (or, if the first payment, since the Effective Date)/365 (or, 366 during a calendar "leap" year) times 315,000.00 times .0275, shall be deemed immediately due and payable. Prepayment of any portion of the Settlement Amount is allowed. Interest, as computed by the provisions of Paragraph 1, shall also be due and payable on the date of any pre-payment. Upon any default by AWC of the terms contained in Paragraph 1 or any other terms of this Agreement, the Government shall have the unconditioned right to accelerate payment and require that the full Settlement Amount then-outstanding be immediately due and payable.

2. Subject to the exceptions in Paragraph 6 (concerning excluded claims), and conditioned upon AWC's full payment of the Settlement Amount, the United States releases AWC and Gaynelle Brown, R.N. (individually and as an employee and agent of AWC) from any civil or administrative monetary claim the United States has for the Covered Conduct that is described above and more specifically described in the Government's January 28, 2014 correspondence, 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.

Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon AWC's full payment of the Settlement Amount, the State of North Carolina releases AWC and Gaynelle Brown, R.N. (individually and as an employee and agent of AWC) from the North Carolina Medical Assistance Provider Fraud Claims Act, N.C.G.S. § 108A-70.10,

et seq.; the North Carolina False Claims Act, N.C.G.S. '1-605, et seq.; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. In consideration of the obligations of AWC in this Agreement and the Integrity Agreement (IA), entered into between OIG-HHS and John Shen, M.D. and Albemarle Women's Clinic, P.A. (collectively, "Dr. Shen"), and conditioned upon AWC'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 Dr. Shen 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 6 (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 Dr. Shen 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 6, below.

4. Default. In the event that AWC, by and through Albemarle Women's Clinic, fails to pay any amount as provided in Paragraph 1, above, within five (5) business days of the date upon which such payment is due, AWC shall be in Default of its payment obligations ("Default"). The United States will provide written notice of the Default, and AWC shall have an opportunity to cure such Default within five (5) business days from the date of the receipt of the notice. Notice of Default will be delivered to AWC, or to such representative as AWC shall designate in advance in writing. If AWC fails to cure the Default within five (5) business days

of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal, balance and interest due). AWC shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to AWC by any department, agency, or agent of the United States at the time of the Default; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. AWC agrees not to contest any offset imposed and not to contest any collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court. AWC shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

5. Notwithstanding the foregoing, in the event of Default as defined in Paragraph 4, above, OIG-HHS may exclude AWC from participating in all Federal health care programs until AWC pays the Settlement Amount and reasonable costs as set forth in Paragraph 4, above. OIG-HHS will provide written notice of any such exclusion to AWC. AWC waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7). Reinstatement to program participation is not automatic. If at the end of the period of exclusion AWC wishes to apply for reinstatement, AWC must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. AWC will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

6. Notwithstanding the releases given in paragraph 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the Government are specifically reserved and are not released:

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

7. AWC has provided sworn financial disclosure statements ("Financial Statements") to the Government and the Government has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. AWC warrants that the Financial Statements were complete and accurate at the time they were provided to the Government. If the Government learns of asset(s) in which AWC had an interest at the time the Financial Statements were provided to the Government that were not disclosed in the Financial Statements, or if the Government learns of any misrepresentation by AWC on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$50,000 or more, the Government may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of AWC previously undisclosed. AWC agrees not to contest any collection action undertaken by the Government pursuant to this provision, and immediately to pay the Government all reasonable costs incurred in such an action, including attorney's fees and expenses.

8. In the event that the Government, pursuant to Paragraph 7 (concerning disclosure of assets) above, opts to rescind this Agreement, AWC agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the Government within 60 calendar days of written notification to AWC that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the date of execution of this Agreement.

9. AWC waives and shall not assert any defenses AWC may have to any criminal prosecution or administrative action relating to the Covered Conduct that are specifically limited to a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

10 AWC 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 AWC has asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicaid carrier or intermediary or any state payor, related to the Covered Conduct; and AWC agrees not to resubmit to any Medicaid carrier or intermediary or any state payor any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

12. AWC 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 AWC its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the Government's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) AWC's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;

- (5) the payment AWC makes to the Government pursuant to this Agreement, including any costs and attorneys fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the IA to:

 - (i) Retain an independent review organization to perform quarterly reviews as described in Section III of the IA; and
 - (ii) Prepare and submit reports to the OIG-HHS, 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). However, nothing in this paragraph 18.a.(6) that may apply to the obligations undertaken pursuant to the IA affects the status of costs that are not allowable based on any other authority applicable to AWC.

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

c. **Treatment of Unallowable Costs Previously Submitted for Payment:** Within 90 days of the Effective Date of this Agreement, and to the extent necessary, AWC agrees to 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 AWC 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. AWC agrees that the Government, at a minimum, shall be entitled to recoup from AWC any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the Government pursuant to the direction of the United States Department of Justice and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by AWC or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on AWC or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

13. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity.

14. AWC 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.

15. AWC warrants that it has reviewed his financial situation and that he currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall, to the fullest extent possible, remain solvent during payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to AWC, 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 AWC was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

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

17. 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.

18. 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 Middle 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.

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

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

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

22. This Agreement is binding on the Parties' successors, transferees, heirs, and assigns.

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

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

[Settlement Agreement – Remainder of Page Intentionally Blank]

THE UNITED STATES OF AMERICA

**Ripley Rand
UNITED STATES ATTORNEY**

DATED: 1-26-15

**BY: Cheryl T. Sloan
Cheryl T. Sloan
United States Attorney
For the Middle District of North Carolina
101 South Edgeworth Street, 4th Floor
Greensboro, NC 27401**

DATED: _____

**BY: _____
Robert K. DeConti
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
United States Department of
Health and Human Services**

THE STATE OF NORTH CAROLINA

DATED: _____

**BY: _____
CHARLES H. HOBGOOD
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations
Division**

THE UNITED STATES OF AMERICA

**Ripley Rand
UNITED STATES ATTORNEY**

DATED: _____

BY: _____

**Cheryl T. Sloan
United States Attorney
For the Middle District of North Carolina
101 South Edgeworth Street, 4th Floor
Greensboro, NC 27401**

DATED: 2/4/15

BY: Robert K. DeConti

**Robert K. DeConti
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
United States Department of
Health and Human Services**

THE STATE OF NORTH CAROLINA

DATED: _____

BY: _____

**CHARLES H. HOBGOOD
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations
Division**

THE UNITED STATES OF AMERICA

**Ripley Rand
UNITED STATES ATTORNEY**

DATED: _____

BY: _____

**Cheryl T. Sloan
United States Attorney
For the Middle District of North Carolina
101 South Edgeworth Street, 4th Floor
Greensboro, NC 27401**

DATED: _____

BY: _____

**Robert K. DeConti
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
United States Department of
Health and Human Services**

THE STATE OF NORTH CAROLINA

DATED: 1/15/2015

BY: Charles H. Hoogood

**CHARLES H. HOOGOOD
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations
Division**

ALBEMARLE WOMEN'S CLINIC, P.A.

DATED: 1/13/2015

BY: John Shen
JOHN SHEN, M.D.
(as Owner and shareholder of Albemarle Women's
Clinic, P.A.))

JOHN SHEN, M.D.

DATED: 4/6/2015

BY: John Shen
JOHN SHEN, M.D.
(as an Individual)

GAYNELLE BROWN, R.N.

DATED: 1/13/15

BY: [Signature]
GAYNELLE BROWN, R.N.
(as an Individual, and as an employee or agent of
Albemarle Women's Clinic, P.A.)

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement" or "State Settlement Agreement") is entered into between the State of North Carolina ("the State") and Pediatric Services of America, Inc. a Delaware Corporation; Pediatric Services of America, Inc. a Georgia Corporation; Pediatric Healthcare, Inc.; Pediatric Home Nursing Services (collectively "Pediatric Services of America"), hereinafter collectively referred to as "the Parties."

II. PREAMBLE

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

A. At all relevant times, Pediatric Services of America, a Delaware corporation with its principal place of business in Georgia, marketed and provided nursing and caregiver home care services for medically fragile children and adults in the United States.

B. On May, 24, 2013, Relator Sheila McCray ("Relator") filed a *qui tam* action in the United States District Court for the Southern District of Georgia, Savannah Division captioned *United States of America et al., ex. rel Sheila McCray v. Pediatric Services of America, Inc., Pediatric Services of America, Pediatric Healthcare, Inc., Pediatric Home Nursing Services, collectively d/b/a PSA Healthcare and Portfolio Logic, LLC*, Civil Action No. CV413-127. On December 11, 2013, Relator filed a First

Amended Complaint in the instant action. This *qui tam* action will be referred to collectively as the "Civil Action."

C. Pediatric Services of America has entered into a separate civil settlement agreement (the "Federal Settlement Agreement") with the United States of America (as that term is defined in the Federal Settlement Agreement) hereinafter referred to as the "United States."

D. The State contends that Pediatric Services of America caused claims for payment to be submitted to the State's Medicaid Program (see 42 U.S.C. §§ 1396-1396(v)).

E. The State contends that it has certain civil and administrative causes of action against Pediatric Services of America for engaging in the following conduct (the "Covered Conduct"):

- Pediatric Services of America knowingly failed to return overpayments that it received from the state Medicaid programs of Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Massachusetts, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia and Washington on claims submitted by PSA to the state Medicaid programs between January 1, 2007 and June 30, 2013;
- Between January 1, 2008 and October 31, 2014, PSA's locations in California, Colorado, Connecticut, Florida, Georgia, Louisiana, North Carolina, New York, Pennsylvania, South Carolina, Texas and Virginia knowingly submitted claims to those states' Medicaid programs for services that overstated the length of time that the services were rendered due to the fact that PSA's payroll and billing systems double rounded minutes worked between 23 and 30 minutes.

F. This Agreement is neither an admission of facts or liability by Pediatric Services of America, nor a concession by the State that its allegations are not well founded. Pediatric Services of America expressly denies the allegations of the State as set forth herein and in the Civil Action.

G. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Pediatric Services of America agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the sum of \$2,773,007.43, plus accrued interest on that amount of 1.625% per annum commencing on February 5, 2015 and continuing and including the day payment is made under this Agreement (collectively, the "Settlement Amount"). The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of the Federal Settlement Agreement, and subject to the terms of this Agreement. The debt shall forever be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) Pediatric Services of America shall pay to the United States the sum of \$1,709,493.66, plus accrued interest on that amount at the rate of 1.625% per annum commencing on February 5, 2015, ("Federal Settlement Amount"). The Federal

Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) Pediatric Services of America shall pay to the Medicaid Participating States the sum of \$1,063,513.77, plus accrued interest ("Medicaid State Settlement Amount"), subject to the non-participating state deduction provision of Sub-paragraph (d) below ("Medicaid Participating State Settlement Amount"), no later than seven (7) business days after the expiration of the 60 day opt-in period for Medicaid Participating States described in Sub-paragraph (c) below and receipt of written instructions from the State Team. The Medicaid Participating State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Negotiating Team ("State Team"), which written instructions shall be delivered to counsel for Pediatric Services of America.

(c) Pediatric Services of America shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Pediatric Services of America and the State Team have agreed, or in a form otherwise agreed to by Pediatric Services of America and an individual State. The State shall constitute a Medicaid Participating State provided this Agreement is fully executed by the State and delivered to Pediatric Services of America's attorneys within 60 days of receiving this Agreement. If this condition is not satisfied within 60 days, Pediatric Services of America's offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for Pediatric Services of America and the State Team to extend the 60 day period.

(d) The total portion of the amount paid by Pediatric Services of America in settlement for the Covered Conduct for the State is \$101,518.43 consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$31,844.71, plus applicable interest (the "State Amount"). If the State does not execute this Agreement within 60 days of receiving this Settlement Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Pediatric Services of America absent written agreement between counsel for Pediatric Services of America and the State Team to extend the time period for executing this Agreement.

2. The State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Pediatric Services of America in State or Federal Courts for the Covered Conduct including any supplemental state law claims asserted in the Civil Action and to file any necessary dismissal pleadings. Contingent upon the receipt of their respective Medicaid Participating State Settlement Amounts, the States, if served with the Civil Action and liable to pay a Relator's share, agrees to pay the Relator(s) the amount of \$5,095.16, plus applicable interest. This amount is to be paid through the State Team and has been addressed via side letter(s) with the Relator(s) in the Civil Action(s).

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Pediatric Services of America set forth in this Agreement, and conditioned upon receipt by the State of its share of the Medicaid State Settlement Amount as required under Section III, Paragraph 1(b) of this Agreement, the State agrees to release

Pediatric Services of America, its predecessors and current and former parents, divisions, subsidiaries, affiliates, successors, transferees, heirs, and assigns, and their current and former directors, officers, and employees, individually and collectively (collectively, the "Pediatric Services of America Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program as a result of the Covered Conduct.

4. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

(a) any criminal, civil, or administrative liability arising under state revenue codes;

(b) any criminal liability not specifically released by this Agreement;

(c) any civil or administrative liability that any person or entity, including any Pediatric Services of America Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

(d) any liability to the State for any conduct other than the Covered Conduct;

(e) any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;

(f) any liability based upon obligations created by this Agreement;

(g) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;

(h) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Pediatric Services of America;

(i) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or

(j) any liability based on a failure to deliver goods or services due.

5. Notwithstanding the provisions sets forth in Paragraph 4(g) and except as reserved in Paragraphs 4(a) and (c) above, in consideration of the obligations of Pediatric Services of America sets forth in this Agreement, and the Corporate Integrity Agreement ("CIA") that Pediatric Services of America has entered into with the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG") in connection with this matter, and conditioned on receipt by the State of its share of the State Medicaid Settlement Amount as required under Section III, Paragraph 1(b) of this Agreement, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against Pediatric Services of America for the Covered Conduct. Provided, however, nothing in this Agreement precludes the State from taking action against Pediatric Services of America in the event that Pediatric Services of America is excluded by the federal government, or for conduct and practices other than the Covered Conduct.

6. Pediatric Services of America waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct,

which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. In consideration of the obligations of the State set forth in this Agreement, the Pediatric Services of America Released Entities waive(s) and discharge(s) the State, its agencies, employees, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Pediatric Services of America Released Entities have against the State, its agencies, employees, and agents arising from the State's investigation and prosecution of the Covered Conduct.

8. The amount that Pediatric Services of America must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of any claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and Pediatric Services of America agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees to use its best efforts to withdraw the appeal of or not to appeal or cause the appeal of any such denials of claims.

9. Pediatric Services of America shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

10. Pediatric Services of America expressly warrants that it has reviewed its financial condition and that it is currently 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 of the Settlement Amount and compliance with this Agreement.

11. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

12. Pediatric Services of America agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement. Upon reasonable notice, Pediatric Services of America shall facilitate, and agrees not to impair, the cooperation of its directors, officers, employees or agents, for interviews and testimony, consistent with the rights and privileges of such individuals and of Pediatric Services of America. Upon request, Pediatric Services of America agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct. Pediatric Services of America shall be responsible for all costs it may incur in complying with this paragraph.

13. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

15. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

16. In addition to all other payments and responsibilities under this Agreement, Pediatric Services of America agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. Pediatric Services of America will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

17. This Agreement is governed by the laws of the State, except disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions of the CIA, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

18. The undersigned Pediatric Services of America signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

19. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

20. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

21. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

STATE OF NORTH CAROLINA

By: Charles H. Hobbgood
CHARLES H. HOBGOOD
Director, Medicaid Investigations Division
Office of the Attorney General

Dated: 6/18/2015

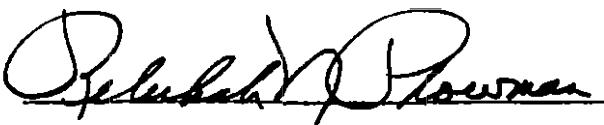
By: D/R/R
DAVE RICHARD
Deputy Secretary of Medical Assistance
Division of Medical Assistance

Dated: 6/12/15

Pediatric Services of America

By: _____ Dated: _____

Eric Minkove
Chief Executive Officer

By:  Dated: July 20, 2015
Rebekah Plowman, Esq.
Counsel to Pediatric Services of America

Pediatric Services of America

By: *Eric Minkove* Dated: 7/20/15

Eric Minkove
Chief Executive Officer

By: _____ Dated: _____

Rebekah Plowman, Esq.
Counsel to Pediatric Services of America

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) and the Defense Health Agency (DHA) which administers TRICARE, the State of North Carolina, by and through the North Carolina Attorney General, and the North Carolina Division of Medical Assistance (collectively "the Government" includes both federal and state entities above), Cape Fear Regional Urological Clinic, P.A., a North Carolina Professional Association, and Garrett M. Franzoni, M.D., (collectively "Cape Fear") , and Relator Christina Borton (Relator), (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Cape Fear Regional Urological Clinic, P.A., a North Carolina Professional Association, and Garrett M. Franzoni, M.D., provide medical services primarily to Medicare, Medicaid and TRICARE patients in North Carolina.

B. On November 8, 2013, Christina Borton filed a qui tam action in the United States District Court for the Eastern District of North Carolina, captioned United States ex rel. Christina Borton, bringing this action on behalf of the United States and North Carolina v. Cape Fear Regional Urological Clinic, P.A., a North Carolina Professional Association, and Garrett M. Franzoni, M.D., Case No. 5:13-cv-788-BO, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). The Relator alleged that Cape Fear submitted false claims to Medicare, Medicaid, and TRICARE by billing improperly, including billing for services without the

required direct physician supervision or without the requisite medical professional providing the service. The Government intervened in the Civil Action on October 20, 2014.

C. The Government contends that Cape Fear 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, the TRICARE Program, 10 U.S.C. §§ 1071-1110b; and the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396w-5.

D. The Government contends that it has certain civil claims against Cape Fear arising from false claims for Biofeedback Therapy, Testosterone Injections, and Percutaneous Nerve Stimulation (PTNS) Services to Medicare, TRICARE and Medicaid during the period from December 31, 2009, through December 31, 2014. That conduct is referred to below as the Covered Conduct.

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

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

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. Cape Fear shall pay to the Government the sum of \$470,000 (Settlement Amount), and interest on the Settlement Amount at a rate of 3% compounded daily from February 5, 2015, by electronic funds transfer pursuant to written instructions to be provided by Office of the United States Attorney.

Cape Fear shall pay the Government the sum of \$15,000 within 60 days of the Effective Date of this Agreement. Cape Fear shall pay the Settlement Amount balance and interest in 48 regular installment payments on the 15th of each month, beginning the third month after the Effective Date of this Agreement.

In order to secure this Agreement, Cape Fear Regional Urological Clinic, P.A., and Garrett M. Franzoni, M.D shall both enter a consent order for judgment in the amount of \$470,000, contemporaneously with this Settlement Agreement, holding that they are liable in the full Settlement Amount, plus interest at a rate of 3% compounded daily, and the judgment to be entered by the Court, based upon the consent order of the parties.

In the event that Cape Fear fails to pay any Settlement Amount as provided above within five (5) business days of the date on which such payment is due, Cape Fear shall be in default of its payment obligations ("Default"). The Government will provide written notice of the Default to Defendant and Defendant shall have the opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default will be delivered to Defendant's counsel executing this agreement or to such other representative as Defendant shall designate in advance in writing. If Defendant fails to cure such Default within five (5) business days of receiving

the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). Upon default, the Government, at its sole option, may:

- (a) offset or recoup the remaining unpaid balance from any amounts due and owing to Defendant by any department, agency, or agent of the Government at the time of Default;
- (b) collect the entire unpaid balance of the Settlement Amount, plus interest, including 12% interest from the date of Default, and all other amounts due upon the event of Default as specified in this paragraph; (c) file a civil action for the Covered Conduct; or
- (d) exercise any other rights granted by law or in equity, including referral of this matter for private collection. In the event a complaint is filed pursuant to subsection (c) of this paragraph, Defendant 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 Defendant on the Effective Date. Defendant agrees not to contest any consent judgment, offset, or any collection action undertaken by the Government pursuant to this paragraph, either administratively or in any state or federal court. Defendant shall pay Government all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses.

2. Conditioned upon the Government receiving the Settlement Amount payments from Cape Fear, the Government agrees that it shall pay to Relator by electronic funds transfer 20 % of each such payment received under the Settlement Agreement as soon as feasible after receipt of the payment.

3. Cape Fear and Relator have a separate agreement regarding payment to Relator for attorney's fees and costs.

4. Subject to the exceptions in Paragraph 9 (concerning excluded claims) below, and conditioned upon Cape Fear's full payment of the Settlement Amount and subject to Paragraph 20, 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 Cape Fear, together with current or former owners, and officers, directors, and affiliates, 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.

5. Subject to the exceptions in Paragraph 9 below, and conditioned upon Cape Fear's full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Cape Fear from any civil monetary claim the Relator has on behalf of the Government for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. In the event of Default as defined in Paragraph 1, above, OIG-HHS may exclude Cape Fear from participating in all Federal health care programs until Cape Fear pays the Settlement Amount and reasonable costs as set forth in Paragraph 1, above. OIG-HHS will provide written notice of any such exclusion to Cape Fear. Cape Fear 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 Cape Fear wishes to apply for reinstatement, Cape Fear must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-3005. Cape Fear will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

7. In consideration of the obligations of Cape Fear set forth in this Agreement, and conditioned upon Cape Fear's full payment of the Settlement Amount, DHA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against Cape Fear under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 9 (concerning excluded claims), below, and as reserved in this Paragraph. DHA expressly reserves authority to exclude Cape Fear from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii), based upon the Covered Conduct. Nothing in this Paragraph precludes TMA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9, below.

8. In consideration of the obligations of Cape Fear set forth in this Agreement, and Subject to the exceptions in Paragraph 9, below, in consideration of the obligations of Cape Fear set forth in this Agreement, and conditioned upon Cape Fear's full payment of the Settlement Amount, the State of North Carolina (on behalf of itself, its officers, agents, agencies, and departments) releases Cape Fear, together with its employees, officers and directors, 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.

9. Notwithstanding the releases given in paragraphs 4, 5, 6, 7, and 8 of this Agreement, or any other term of this Agreement, the following claims of the Government are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory 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; and
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

10. Relator and her 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 Relator's receipt of the payment described in Paragraph 2, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the Government, 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.

11. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Cape Fear, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

12. Cape Fear waives and shall not assert any defenses Cape Fear may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

13. Cape Fear fully and finally releases the Government, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Cape Fear has asserted, could have asserted, or may assert in the future against the Government, its agencies, officers,

agents, employees, and servants, related to the Covered Conduct and the Government's investigation and prosecution thereof.

14. Cape Fear fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Cape Fear has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

15. 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 Cape Fear agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

16. Cape Fear 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 X, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the Government's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Cape Fear's investigation, defense, and corrective actions

undertaken in response to the Government's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

- (4) the negotiation and performance of this Agreement; and
- (5) the payment Cape Fear makes to the Government pursuant to this Agreement and any payments that Cape Fear may make to Relator, including costs and attorneys' 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 Cape Fear, and Cape Fear 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 Cape Fear or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Cape Fear 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 Cape Fear 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. Cape Fear agrees that the United States, at a minimum, shall be entitled to recoup from Cape Fear 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 Cape Fear or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Cape Fear 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 Cape Fear's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

17. 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 18 (waiver for beneficiaries paragraph), below.

18. Cape Fear 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.

19. Cape Fear warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Cape Fear, 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 Cape Fear was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

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

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

b. If Cape Fear's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Cape Fear for the claims that would otherwise be covered by the releases provided in Paragraphs 4, 5, 6, 7 and 8, above. Cape Fear agrees that (i) any such claims, actions, or proceedings brought by the Government are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Cape Fear shall not argue or otherwise contend that the Government's claims, actions, or proceedings are subject to an automatic stay; (ii) Cape Fear shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the Government within 60 calendar days of written notification to Cape Fear that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were

available on November 8, 2013; and (iii) the Government has a valid claim against Cape Fear in the amount of \$695,000, and the Government may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Cape Fear acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

22. 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.

23. 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.

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

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

26. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
27. This Agreement is binding on Cape Fear's successors, transferees, heirs, and assigns.
28. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.
29. All parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.
30. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 5-6-15 BY: Thomas G. Walker
THOMAS G. WALKER
United States Attorney
NEAL I. FOWLER
Assistant United States Attorney
Civil Division
310 New Bern Avenue
Suite 800, Federal Building
Raleigh, NC 27601-1461
Telephone: (919) 856-4049
Facsimile: (919) 856-4821
E-mail: neal.fowler@usdoj.gov
NC Bar #27371

DATED: 4/9/15 BY: Robert K. DeConti
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

DATED: _____ BY: _____
PAUL J. HUTTER
General Counsel
Defense Health Agency
United States Department of Defense

THE UNITED STATES OF AMERICA

THOMAS G. WALKER
United States Attorney

DATED: _____

BY: _____

NEAL I. FOWLER
Assistant United States Attorney
Civil Division
310 New Bern Avenue
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Raleigh, NC 27601-1461
Telephone: (919) 856-4049
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NC Bar #27371

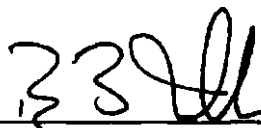
DATED: _____

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

DATED: 4/17/15

BY: _____


BRYAN T. WHEELER
Acting General Counsel
Defense Health Agency
United States Department of Defense

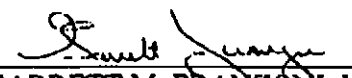
THE STATE OF NORTH CAROLINA


DATED: 5/1/2015

BY: Charles H. Hobgood
CHARLES H. HOBGOOD
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations
Division

CAPE FEAR REGIONAL UROLOGICAL CLINIC
AND GARRETT M. FRANZONI, M.D. - DEFENDANTS

DATED: 4-2-15 BY: 
CAPE FEAR REGIONAL UROLOGICAL CLINIC

DATED: 4-2-15 BY: 
GARRETT M. FRANZONI, M.D.

DATED: 4-3-15 BY: 
RENEE B. CRAWFORD
CRAWFORD & CRAWFORD
Counsel for Defendants Cape Fear Regional
Urological Clinic and Garrett M. Franzoni, M.D.

CHRISTINA BORTON - RELATOR

DATED: 4/6/15 BY: Christina Borton
CHRISTINA BORTON

DATED: 4/7/2015 BY: Charles H. Rabon, Jr.
CHARLES H. RABON, JR.
RABON LAW FIRM, PLLC
Counsel for Relator

SETTLEMENT AGREEMENT

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

RECITALS

A. Physicians Pharmacy Alliance, Inc. (hereinafter "PPA") is a corporation that provides pharmacy services, primarily to Medicaid and Medicare patients in North Carolina.

B. The Government contends that PPA 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, and the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396w-5.

C. The Government contends that:

1. Between January 1, 2008, and January 4, 2011, PPA provided gift cards 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

YKB

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

The Government contends that through the above conduct, PPA submitted or caused to be submitted 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.

D. The State of North Carolina alleges that it has certain claims against PPA for the Covered Conduct under the North Carolina False Claims Act, N.C.G.S. § 1-605, et. seq.

E. The United States alleges that it has certain civil claims against PPA for the Covered Conduct.

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

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

TERMS AND CONDITIONS

1. PPA shall pay to the Government five million dollars (\$5,000,000) ("Settlement Amount"), and interest on the Settlement Amount at a rate of 2.5% compounded annually from September 4, 2014, by electronic funds transfer to an account (the "Identified Account") pursuant to written instructions to be provided to PPA no later than the 50th day after the Effective Date of this Agreement by the Office of the United States Attorney.

PPA shall pay the Government the sum of one million dollars (\$1,000,000), within 60 days of the Effective Date of this Agreement. PPA shall make a second payment of two million dollars (\$2,000,000), plus accrued interest to the date of the second payment, within one year of the Effective Date of this Agreement. PPA shall make a third payment of the remaining balance of two million dollars (\$2,000,000), plus the remaining accrued interest, within two years of the Effective Date of this Agreement. Unless written notice is given to PPA no later than the 10th Business Day prior to the date on which any such payment is due that such payment shall be paid to an account other than the Identified Account, PPA will make the payment to the Identified Account.

In order to secure this Agreement, the Defendant shall enter a consent order for judgment in the amount of \$5,000,000, contemporaneously with this Settlement Agreement, holding that the Defendant is liable in the full Settlement Amount, plus interest at a rate of 2.5% compounded annually, and the judgment to be entered by the Court, based upon the consent order of the parties, shall be recorded against the property of PPA by the Government.

PPA makes the following representation and warranties and covenants that (a) as of the Effective Date of this Agreement, (i) PPA's only secured long-term debt is payable to Fifth Street Finance (in an amount equal to, on the Effective Date of this Agreement, approximately \$10.5 million) (the "Senior Loan") and (ii) as of the Effective Date of this Agreement, PPA has no other long-term indebtedness with a principal amount in excess of \$500,00 other than the note payable to James Taggart (in an amount equal to, as of the Effective Date of this Agreement, approximately \$3 million) (the "Subordinated Loan"), and (iii) PPA shall not obtain other secured long-term debt until the judgment referenced in the

immediately preceding paragraph is properly recorded, except that PPA is expressly permitted to secure a long-term debt to replace the Senior Loan (b) until such time as the Settlement Amount, plus all interest thereon then due, has been paid in full, PPA will not make any cash payments or prepayments of principal on the Senior Loan or the Subordinated Loan except that PPA may make monthly interest payments (equal to, as of the Effective Date of this Agreement, 10.233%, LIBOR + 10%, on the principal outstanding) quarterly principal payments (equal to \$400,000) and other mandatory prepayments in respect of the Senior Loan in accordance with the Credit Agreement with Fifth Street Finance as required in its current written loan agreements or as required in any new loan agreement with long-term debt that replaces the Senior Loan so long as the new loan agreement does not contain interest payments or principal payments that are collectively higher (total payments for respective time periods) than those referenced herein, (c) that if any payment default occurs on the Fifth Street Finance loan that remains uncured or unwaived for a period in excess of 10 business days, or if PPA makes any additional payment other than that allowed in subparagraph (b) above, then default automatically occurs on this Government liability and the full unpaid obligation to the Government becomes immediately due (acceleration), and (d) PPA shall provide prompt notice to the Government (in accordance with the notice provisions of this Agreement) of any type of default with respect to the Senior Loan which remains uncured or unwaived for a period in excess of 10 business days, the acceleration of the Senior Loan, or the exercise of any material rights and remedies under the Senior Loan or the Subordinated Loan.

In the event that PPA fails to pay any amounts as provided in paragraph 1 within five (5) business days of the date on which such payment is due or otherwise fails to comply with

the covenants contained in the immediately preceding paragraph, PPA shall be in default of its payment obligations ("Default"). The Government will provide written notice of the Default to Defendant and Defendant shall have the opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default will be delivered to Defendant's counsel executing this agreement or to such other representative as Defendant shall designate in advance in writing. If Defendant fails to cure such Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 9% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). Upon default, the Government, at its sole option, may: (a) offset or recoup the remaining unpaid balance from any amounts due and owing to Defendant by any department, agency, or agent of the Government at the time of Default; (b) collect the entire unpaid balance of the Settlement Amount, plus interest, including 9% 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, Defendant 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 Defendant on the Effective Date. Defendant agrees not to contest any consent judgment, offset, or any collection action undertaken by the Government pursuant to this paragraph, either administratively or in any state or federal court. Defendant shall pay the Government all reasonable costs of collection

and enforcement under this paragraph, including attorneys' fees and expenses.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below and subject to Paragraph 14, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement), and conditioned upon PPA's full payment of the Settlement Amount, the United States releases PPA, together with its current employees, officers and directors, including current employees who were employees of PPA when PPA was acquired in January 2011, and all employees hired after January 2011 (but not former employee and owner 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.

3. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against PPA and/or PPA's officers, directors, and employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion).

Notwithstanding the foregoing, in the event of Default as defined in Paragraph 1, above, OIG-HHS may exclude PPA from participating in all Federal health care programs until PPA pays the Settlement Amount and reasonable costs as set forth in Paragraph 1, above. OIG-HHS will provide written notice of any such exclusion to PPA. PPA 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 PPA wishes to apply for reinstatement, PPA must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. PPA will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

4. In consideration of the obligations of PPA set forth in this Agreement, and Subject to the exceptions in Paragraph 5, below, in consideration of the obligations of PPA set forth in this Agreement, and conditioned upon PPA's full payment of the Settlement Amount, the State of North Carolina (on behalf of itself, its officers, agents, agencies, and departments) releases PPA, together with its current employees, officers and directors, including current employees who were employees of PPA when PPA was acquired in January 2011, and all employees hired after January 2011 (but not former employee and owner 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.

5. Notwithstanding the releases given in paragraphs 2 and 4 of this Agreement, or any other term of this Agreement, the following claims of the Government are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- i. Any liability of individuals except as expressly stated herein.

6. PPA has provided sworn financial disclosure statements (Financial Statements) to the Government and the Government has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. PPA warrants that the Financial Statements are complete, accurate, and current. If the Government learns of asset(s) in which PPA had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the Government learns of any misrepresentation by PPA on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$500,000 or more, the Government may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus

one hundred percent (100%) of the value of the net worth of PPA previously undisclosed. PPA agrees not to contest any collection action undertaken by the Government pursuant to this provision, and immediately to pay the Government all reasonable costs incurred in such an action, including attorney's fees and expenses, except that PPA may argue that misrepresentations were not made with knowledge.

7. PPA waives and shall not assert any defenses PPA may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

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

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 PPA agrees not to resubmit to any Medicare contractor, Medicaid fiscal agent, or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. PPA 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 and any related plea agreement;
- (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) PPA's investigation, defense, and corrective actions undertaken in response to the Government's 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 any Plea Agreement; and
- (5) the payment PPA makes to the Government 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 PPA, and PPA shall not charge such Unallowable Costs directly or indirectly to any contracts with the Government or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by PPA or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: PPA 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 PPA 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. PPA agrees that the Government, at a minimum, shall be entitled to recoup from PPA any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the Government pursuant to the direction of the Department of Justice and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by PPA or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as

defined in this Paragraph) on PPA or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

11. PPA agrees to cooperate in good faith and truthfully with the Government's investigation of individuals and entities not released in this Agreement.

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. PPA 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. PPA warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to PPA, 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 PPA was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

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

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

b. If PPA's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against PPA for the claims that would otherwise be covered by the releases provided in Paragraphs 2, 3 and 4, above. PPA agrees that (i) any such claims, actions, or proceedings brought by the

Government are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and PPA shall not argue or otherwise contend that the Government's claims, actions, or proceedings are subject to an automatic stay; (ii) PPA shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the Government within 90 calendar days of written notification to PPA that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 25, 2013; and (iii) the Government has a valid bankruptcy claim against PPA in the amount of \$10,000,000, and the Government may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. PPA acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

17. 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.

18. 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.

19. This Agreement constitutes the complete civil agreement between the Parties.
This Agreement may not be amended except by written consent of the Parties.
20. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.
21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
22. This Agreement is binding on PPA's successors, transferees, heirs, and assigns.
23. All parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.
24. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 5.6-15 BY: Thomas G. Walker
THOMAS G. WALKER
United States Attorney
NEAL I. FOWLER
Assistant United States Attorney
310 New Bern Avenue, Suite 800
Raleigh, NC 27601-1461

DATED: 4/14/15 BY: Allie Pang
ALLIE PANG
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ 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

THE UNITED STATES OF AMERICA

THOMAS G. WALKER
United States Attorney

DATED: _____

BY: _____

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

DATED: _____

BY: _____

ALLIE PANG
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 5/6/15

BY: _____

Robert K. DeConti
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

THE STATE OF NORTH CAROLINA

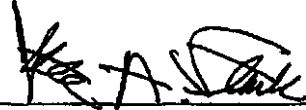
DATED: 4/14/2015

BY: Charles H. Hobbard
CHARLES H. HOBGOOD
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations
Division

PHYSICIANS PHARMACY ALLIANCE - DEFENDANT

DATED: 4.8.2015

BY:



PETE A. STARK
Chief Executive Officer
Physicians Pharmacy Alliance

DATED: _____

BY:

STEPHEN T. SMITH
McMillan & Smith
Counsel for Physicians Pharmacy Alliance

DATED: _____

BY:

KIRSTEN BACKSTROM
Member
Epstein Becker & Green, P.C.
Counsel for Physicians Pharmacy Alliance

PHYSICIANS PHARMACY ALLIANCE - DEFENDANT

DATED: _____

BY: _____

PETE A. STARK
Chief Executive Officer
Physicians Pharmacy Alliance

DATED: 4-13-15

BY: _____

Stephen T. Smith
STEPHEN T. SMITH
McMillan & Smith
Counsel for Physicians Pharmacy Alliance

DATED: 4/9/15

BY: _____

Kirsten Backstrom
KIRSTEN BACKSTROM
Member
Epstein Becker & Green, P.C.
Counsel for Physicians Pharmacy Alliance