

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS), the Defense Health Agency (DHA), acting on behalf of the TRICARE Program; and the Office of Personnel Management (OPM), which administers the Federal Employees Health Benefits Program (FEHBP) (collectively, the “United States”), K-VA-T Food Stores, Inc. d/b/a/ Food City (“Food City”) and K-VA-T Litigation Partnership, LLP (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Food City is a privately held family company and employee-owned corporation with its principal place of business in Abingdon, Virginia. Food City is a grocery store chain with stores located in Alabama, Georgia, Kentucky, Tennessee, and Virginia. Food City has approximately 121 in-store pharmacies.

B. On October 13, 2020, Relator K-VA-T Litigation Partnership, LLP filed a qui tam action in the United States District Court for the Eastern District of Tennessee captioned *United States ex rel. K-VA-T Litigation Partnership, LLP, et al. v. K-VA-T Food Stores, Inc., d/b/a Food City*, Case No. 3:20-cv-436, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“the Civil Action”). Relator alleges that Food City knowingly dispensed controlled substances without a valid prescription and caused the submission of false claims for controlled substances dispensed at its pharmacies that were medically unnecessary and/or lacked a legitimate medical purpose in violation of the False Claims Act.

C. The United States contends that Food City submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”); the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”); and the FEHBP, 5 U.S.C. §§ 8901-8914.

D. The United States alleges that it has certain claims against Food City arising from conduct related to the pharmacies located in the following Food City stores: 425, 428, 437, 604, 611, 616, 630, 631, 642, 644, 647, 656, 667, 672, 674, 677, 679, 687, 694, 821, 827, 852, 895, and 898. Specifically, from January 1, 2011, through December 31, 2018, these twenty-four (24) Food City pharmacies allegedly dispensed opioids and other controlled substances that were medically unnecessary, lacked a legitimate medical purpose or medically accepted indication, and/or were not valid prescriptions. The United States alleges that as result, Food City knowingly submitted, or caused to be submitted, false claims to the Medicare, Medicaid, TRICARE, and FEHB programs in violation of the False Claims Act, 31 U.S.C. §§ 3729-33. The conduct described in this paragraph is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by Food City nor a concession by the United States 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. Food City shall pay to the United States Eight Million Four Hundred Eighty-Eight Thousand Three Hundred Seventy-Eight Dollars and Fifty-Three Cents (\$8,488,378.53) (“Settlement Amount”), of which \$4,244,189.26 is restitution, plus interest on the Settlement Amount at a rate of 4.75%, to accrue per annum from October 4, 2024 through the date of payment, no later than ten (10) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$1,527,908.14 together with any accrued interest (as set out in paragraph 1) to Relator by electronic funds transfer (Relator’s Share).

3. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relator’s reasonable expenses, attorneys’ fees, and costs. Relator has also filed claims seeking relief under 31 U.S.C. § 3730(h). Relator’s claims for reasonable expenses, attorneys’ fees, and costs under 31 U.S.C. § 3730(d) and Relator’s claims under 31 U.S.C. § 3730(h) are not subject to this agreement.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount plus interest due under Paragraph 1, the United States releases Food City together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them 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 6 below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, Relator, for itself and its heirs, successors, attorneys, agents, partners, and assigns, releases Food City from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

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

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal health care programs and the FEHBP;
- 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 of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and

- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and its heirs, successors, attorneys, agents, partners, 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 Relator's Share, Relator and its heirs, successors, attorneys, agents, partners, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Relator, for itself and for its heirs, successors, attorneys, agents, partners, and assigns, releases Food City, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action.

9. Food City waives and shall not assert any defenses Food City 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.

10. Food City fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Food City has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and

servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

11. Food City fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Food City has asserted, could have asserted, or may assert in the future against the Relator, related to the Civil Action and the Relator's investigation and prosecution thereof.

12. 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), TRICARE, or FEHBP carrier or payer or any state payer, related to the Covered Conduct; and Food City agrees not to resubmit to any Medicare contractor TRICARE, or FEHBP carrier or payer or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

13. To the extent applicable, Food City agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Food City, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Food City's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in

connection with the matters covered by this Agreement (including attorneys' fees);

- (4) the negotiation and performance of this Agreement; and
- (5) the payment Food City makes to the United States pursuant to this Agreement and any payments that Food City 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 Food City, and Food City 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 Food City or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

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

14. 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 15 (waiver for beneficiaries paragraph), below.

15. Food City 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.

16. Upon receipt of the payment described in Paragraph 1, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). Relator's dismissal shall be with prejudice and the

United States' dismissal shall be with prejudice as to the Covered Conduct and without prejudice as to any other claims.

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

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

19. 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 Tennessee. 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.

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

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

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

23. This Agreement is binding on Food City's successors, transferees, heirs, and assigns.

24. This Agreement is binding on Relator's successors, transferees, heirs, partners, and assigns.

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

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

[SIGNATURE PAGES FOLLOW]

THE UNITED STATES OF AMERICA

DATED: 12/02/24

BY: 

ELIZABETH J. KAPPAKAS
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____

ALAN G. MCGONIGAL
ALEXA ORTIZ HADLEY
Assistant United States Attorneys
Eastern District of Tennessee

DATED: _____

BY: _____

SUSAN E. GILLIN
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: _____

SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

DATED: _____

BY: _____

EDWARD M. DEHARDE
Deputy Associate Director of Federal Employee
Insurance Operations,
Healthcare and Insurance
United States Office of Personnel Management

DATED: _____

BY: _____

PAUL ST. HILLAIRE
Assistant Inspector General
for Legal & Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

THE UNITED STATES OF AMERICA

DATED: _____

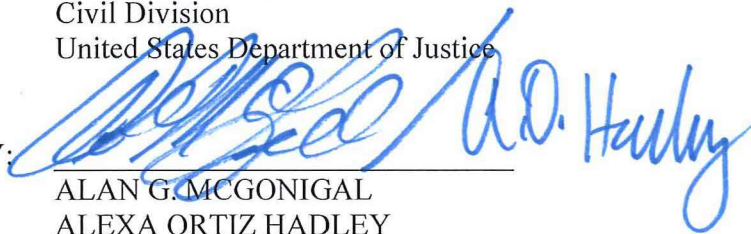
BY: _____

ELIZABETH J. KAPPAKAS
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 12/02/2024

BY: _____

ALAN G. MCGONIGAL
ALEXA ORTIZ HADLEY
Assistant United States Attorneys
Eastern District of Tennessee



DATED: _____

BY: _____

SUSAN E. GILLIN
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: _____

SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

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BY: _____

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Deputy Associate Director of Federal Employee
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United States Department of Justice

DATED: _____

BY: _____
ALAN G. MCGONIGAL
ALEXA ORTIZ HADLEY
Assistant United States Attorneys
Eastern District of Tennessee

DATED: 11/25/24

BY: SUSAN GILLIN Digitally signed by SUSAN GILLIN
Date: 2024.11.25 11:23:53 -05'00'

SUSAN E. GILLIN
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: _____
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United States Department of Justice

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Eastern District of Tennessee

DATED: _____

BY: _____
SUSAN E. GILLIN
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: 11/22/2024

BY: _____
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BLEY.PAUL.NICHOLAS.109987382
Date: 2024.11.22 11:51:02 -05'00'
SALVATORE M. MAIDA
for General Counsel
Defense Health Agency
United States Department of Defense

DATED: _____

BY: _____
EDWARD M. DEHARDE
Deputy Associate Director of Federal Employee
Insurance Operations,
Healthcare and Insurance
United States Office of Personnel Management

DATED: _____

BY: _____
PAUL ST. HILLAIRES
Assistant Inspector General
for Legal & Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

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BY: _____
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Commercial Litigation Branch
Civil Division
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Defense Health Agency
United States Department of Defense

DATED: _____

BY: _____
EDWARD DEHARDE Digitally signed by EDWARD DEHARDE
Date: 2024.11.22 17:27:39 -05'00'
EDWARD M. DEHARDE
Deputy Associate Director of Federal Employee
Insurance Operations,
Healthcare and Insurance
United States Office of Personnel Management

DATED: _____

BY: _____
PAUL ST. HILLAIRES
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Deputy Associate Director of Federal Employee
Insurance Operations,
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United States Office of Personnel Management

DATED: _____

BY: **PAUL ST HILLAIRE**
Digitally signed by PAUL ST HILLAIRE
Date: 2024.11.22 12:04:04 -05'00'

PAUL ST. HILLAIRE
Assistant Inspector General
for Legal & Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

K-VA-T FOOD STORES, INC. d/b/a FOOD CITY

Executed by W. Kyle Carpenter on behalf of K-VA-T Food Stores, Inc. d/b/a Food City as authorized by the Board of K-VA-T Food Stores, Inc. d/b/a Food City through a duly adopted resolution:

DATED: 11/27/24

BY:

W. Kyle Carpenter

W. KYLE CARPENTER

Authorized Agent for K-VA-T Food Stores, Inc. d/b/a Food City

DATED: 11/27/24

BY:

W. Kyle Carpenter

W. KYLE CARPENTER

Counsel for K-VA-T Food Stores, Inc. d/b/a Food City

RELATOR

DATED: Nov-26-2024

BY:

Signed by:



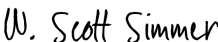
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JONATHAN POSEY
K-VA-T Litigation Partnership, LLP

DATED: Nov-26-2024

BY:

DocuSigned by:



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W. SCOTT SIMMER
Baron & Budd, PC

Counsel for Relator K-VAT Litigation Partnership, LLP