

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Settlement Agreement”) is entered into by and between the United States of America, acting through the United States Attorney’s Office for the Eastern District of California, on behalf of the Drug Enforcement Administration (“DEA”) (collectively, the “United States”); Script Life Pharmacy (“SLP”); and SLP owner Khoa Tan Huynh (“Huynh”). The United States, SLP and Huynh are collectively referred to herein as the “Parties,” and each is individually referred to as a “Party.”

II. PREAMBLE

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

- A. SLP is retail compounding pharmacy located at 255 W Herndon Avenue, suite 101, Clovis, CA 93612.
- B. Huynh is the Pharmacist in Charge and owner of SLP.
- C. SLP is required to conduct its operations in accordance with the statutory and regulatory provisions of the Controlled Substances Act, 21 U.S.C. § 801 et seq. (“the CSA”), and the regulations promulgated thereunder.
- D. The DEA is the Department of Justice component agency primarily responsible for administering the CSA and is vested with the responsibility of investigating violations of the CSA.
- E. The United States Attorney General, through the United States Attorney’s Office, has primary authority to bring civil actions to enforce the CSA in this District. See 21 U.S.C. § 871 and 28 C.F.R. § 0.55(c).

F. DEA investigators conducted an administrative audit and investigation of SLP in June of 2013, pursuant to 21 U.S.C. § 822(f) and an Administrative Inspection Warrant. The accountability audit revealed material variances in counts for several controlled substances evaluated in violation of Title 21 Code of Federal Regulations (“21 CFR”) § 1304.21(a), along with numerous additional violations over the period June 6, 2011 – December 31, 2012, including:

- (1) Failure to indicate whether the biennial inventory was taken as of opening of business or close of business in violation of 21 CFR § 1304.11 (a);
- (2) Initiating a facsimile of a partially or fully pre-populated form for the prescribing practitioner to authorize a refill of controlled substances in violation of 21 CFR §§ 1306.21 (a) and 1306.05 (f), and with additional deficiencies, including: no signature and incorrect doctor identified, in violation of 21 CFR §§ 1306.21 (a), 1306.05 (a) and (f);
- (3) Accepting and filling prescriptions that did not possess the practitioner’s DEA Number and signature in violation of 21 CFR § 1306.21 (a) and 1306.05 (a);
- (4) Accepting and filling prescriptions that did not possess the practitioner’s registration number and/or the prescription was not signed or was signed electronically, in violation of 21 CFR §§ 1306.04 (a), 1306.21 (a), and 1306.05 (a) and (d).

Maximum penalties for these violations range in quantity from \$10,000 to \$25,000 per violation pursuant to Title 21 United States Code § 842. The conduct described in this paragraph F shall be referred to herein as the “Covered Conduct.”

G. As a result of DEA's investigation and audit, the United States contends that SLP and Huynh have committed multiple violations of the CSA under the above-referenced sections.

H. This Settlement Agreement is not an admission of liability by SLP or Huynh for civil penalties under the CSA.

I. However, SLP and Huynh acknowledge that, on some occasions during the period noted in paragraph F above, SLP maintained records of controlled substances and dispensed controlled substances in a manner not fully consistent with the compliance obligations under the CSA and its implementing regulations.

J. To avoid the delay, uncertainty, inconvenience, and expense of litigation, the Parties mutually desire to reach a full and final settlement of this matter, pursuant to the Terms and Conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions, terms, and obligations set forth in this Settlement Agreement, the Parties agree to settle this matter as follows:

III. TERMS AND CONDITIONS

1. In consideration of the obligations of the Parties set forth in this Settlement Agreement, SLP and Huynh agree joint and severally to pay the total sum of two hundred thousand dollars (\$200,000.00) plus accrued interest at the rate of 5% per annum from March 15, 2016, and continuing until and including the day of payment (the "Settlement Amount") to the United States as follows:

a) by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of California;

b) no later than sixty (60) days after the Effective Date of this Settlement Agreement.

2. Subject to the exceptions in Paragraph 3 below concerning excluded claims, in consideration of the obligations of SLP/Huynh in this Settlement Agreement, and conditioned upon the full payment of the Settlement Amount as set forth herein, the United States (on behalf of itself, its officers, agents, agencies, and departments) hereby fully and finally releases SLP and Huynh from any and all liability for violations of the CSA, and the regulations promulgated thereunder, for the Covered Conduct.

3. Notwithstanding any term of this Settlement Agreement, specifically reserved and excluded from the scope and terms of this Settlement Agreement as to any entity or person, including SLP and Huynh, are the following potential claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, United States Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and
- e. Any liability based upon such obligations as are created by this Settlement Agreement.

4. In consideration of the obligations of the United States set forth in this Settlement

Agreement, SLP and Huynh hereby fully and finally release the United States and its employees, servants, agents, agencies, and departments from any and all liability for any civil claims, demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees, interest, and expenses, including any claims for compensatory or punitive damages, which SLP or Huynh have 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, including without limitation, related to the United States' investigation, prosecution, and resolution thereof.

5. Nothing in this Settlement Agreement shall prevent, preclude, limit, or prejudice the United States' right to enforce the CSA and regulations promulgated thereunder by commencing a civil or administrative action against SLP or any of its current and former officers, directors, employees, divisions, affiliates, successors, or assigns, or against Huynh for violations of the CSA outside of the Covered Conduct.

6. Except as otherwise stated herein, each Party to this Settlement Agreement shall bear its own costs, attorneys' fees, and other expenses incurred in any manner in connection with the investigation, litigation, and resolution of this matter, including the preparation and performance of this Settlement Agreement.

7. SLP and Huynh agree that any and all costs SLP or Huynh has or will incur in connection with this matter—including payment of the Settlement Amount, attorneys' fees, as well as costs of investigation and negotiation—shall be Unallowable Costs for government contract accounting and for Medicare, Medicaid, TRICARE, FEHBP, GEHA, CHAMPVA, U.S. Department of Labor, and FEHBP reimbursement purposes.

8. Except as provided in the release paragraphs 2 and 4, this Settlement Agreement is intended to be for the sole benefit of the Parties only. The Parties do not release any claims against any other person or entity not expressly released by this Settlement Agreement.

9. Each individual signing this Settlement Agreement on behalf of SLP represents warrants that he or she has the power, consent, and authorization of SLP to execute this Settlement Agreement.

10. The individuals signing on behalf of the United States represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.

11. Nothing in this Settlement Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of Title 26, United States Code (Internal Revenue Code).

12. This Settlement Agreement is binding on SLP's successors in interest, transferees, and assigns.

13. Each Party warrants that it has been represented by, and has sought and obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect of this Settlement Agreement. The Settlement Agreement was negotiated by the Parties and their respective counsel, each of whom had the opportunity to participate in the drafting thereof. The Parties hereby declare that the terms of this Settlement Agreement have been completely read, fully understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.

14. Each of the Parties warrants and represents that it freely and voluntarily enters into this Settlement Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Each of the Parties further warrants and represents that no other Party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Settlement Agreement, and that no Party has relied on any inducements, promises, or representations made by any Party to this Settlement Agreement, or its representatives, or any other person, except as expressly set forth herein.

15. For purposes of construction, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement. The words of this Settlement Agreement shall not, therefore, be construed against any Party for that reason in any subsequent dispute, but shall be construed so as to effect their fair meaning, the Parties having waived the benefit of California Civil Code § 1654 and similar laws.

16. The Parties consent to the public disclosure of this Settlement Agreement, and of information about this Settlement Agreement.

17. This Settlement Agreement constitutes the complete agreement between the Parties, and supersedes and replaces all prior negotiations and agreements, whether written or oral, regarding the resolution of the claims between the Parties with respect to the subject matter hereof.

18. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together shall constitute one valid and binding Settlement Agreement between the Parties.

19. This Settlement Agreement may not be altered, amended, or modified, except by a writing duly executed by authorized representatives of all Parties.

20. This Settlement Agreement is governed by the laws of the United States. The Parties agree that, should any judicial action be required to enforce or interpret this Settlement Agreement or to resolve any dispute hereunder, the exclusive jurisdiction and venue for such action shall be in the United States District Court for the Eastern District of California.

21. This Settlement Agreement is effective, final, and binding as of the date of signature of the last signatory to the Settlement Agreement (the "Effective Date"). Transmittal and receipt of facsimiles or PDF versions of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

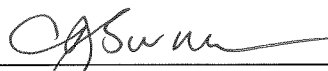
22. All Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

23. The statements set forth in Sections I and II of this Settlement Agreement are incorporated by reference herein as if set forth in full.

THE UNITED STATES

Dated: 3/21/2016

BENJAMIN B. WAGNER
United States Attorney

By: 

Catherine J. Swann
Assistant United States Attorney
Attorneys for the United States

Script Life Pharmacy and Khoa Tan Huynh

Dated: 3-10-2016



Script Life Pharmacy

By: Khoa Tan Huynh

Its: owner SLP

Dated: 3-10-2016

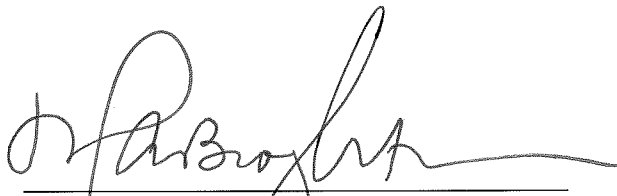


Khoa Tan Huynh

APPROVED AS TO FORM

Dated: 3/10/16

By:



Mark Broughton
Hammerschmidt Broughton Law Corporation
Attorney for Script Life Pharmacy and
Khoa Tan Huynh