

## 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”), acting on behalf of the TRICARE Program (collectively, the “United States”); Amy Sanchez and Ashok Kohli (collectively, the “Relators”); and Smart Pharmacy, Inc. (“Smart Pharmacy”), SP2, LLC (“SP2”), and Gregory H. Balotin (“Balotin”) (collectively, “Defendants”), through their authorized representatives. Collectively, all of the above will be referred to as “the Parties.”

### RECITALS

A. Smart Pharmacy and SP2 were pharmacies organized under the laws of the State of Florida with shared corporate headquarters in Jacksonville, Florida. In 2022, Smart Pharmacy and SP2 filed for voluntary dissolution with the Florida Department of State.

B. Balotin is a pharmacist who co-owned and operated Smart Pharmacy and SP2. Balotin was the Chief Financial Officer of Smart Pharmacy and a managing member of SP2.

C. On December 2, 2014, Relator Amy Sanchez filed a *qui tam* action in the United States District Court for the Middle District of Florida captioned *United States ex rel. Sanchez v. Smart Pharmacy, Inc., et al.*, No. 3:14-cv-1453 (M.D. Fla.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Sanchez Civil Action”).

D. On March 31, 2016, Relator Ashok Kohli filed a *qui tam* action in the United States District Court for the Middle District of Florida captioned *United States ex rel. Kohli v. Smart Pharmacy, Inc., et al.*, No. 3:16-cv-387 (M.D. Fla.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Kohli Civil Action”).

E. On March 15, 2019, the United States filed notices of election to partially intervene in the Sanchez Civil Action and the Kohli Civil Action. On June 6, 2019, the United States District Court for the Middle District of Florida consolidated the Sanchez Civil Action and the Kohli Civil Action. The United States filed a Complaint in Intervention in the consolidated action on June 13, 2019, and a First Amended Complaint in Intervention on March 2, 2020.

F. The United States contends that Smart Pharmacy, SP2, and Balotin 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”), and the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”).

G. As set forth in more detail in the United States’ First Amended Complaint in Intervention, the United States alleges that, in the period from July 30, 2015, to December 31, 2016, Defendants crushed aripiprazole pills approved for oral use and included them in compounded creams used topically for pain treatment, while knowing that there was not an adequate clinical basis to do so. Defendants allegedly included the drug in the pain creams to increase their profits on prescriptions for topical compounded pain drugs submitted to Medicare and TRICARE. The United States further alleges that, in the period from January 1, 2011, to May 31, 2016, Defendants offered and paid remuneration to patients to induce the patients to purchase compounded drugs reimbursed by Medicare and TRICARE by waiving or failing to collect copayments that the patients were obligated to pay. The United States contends that, as a result of this conduct, Defendants knowingly presented, or caused to be presented, false or fraudulent claims and used false records or statements material to false claims to Medicare and TRICARE, in violation of the False Claims Act (“FCA”). This conduct is referred to below as the “Covered Conduct.”

H. This Settlement Agreement is neither an admission of liability by Defendants, nor a concession by the United States that its claims are not well founded.

I. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators' 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. Defendants shall pay to the United States the sum of Seven Million, Four Hundred Thousand Dollars (\$7,400,000.00) plus interest and additional potential contingency payments (the "Settlement Amount"), under the terms and conditions specified herein, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

a. Within thirty (30) calendar days of the Effective Date of this Agreement, Defendants will pay the United States Two Million, Two Hundred and Thirteen Thousand Dollars (\$2,213,000), plus interest at 3.625% per annum from April 14, 2023, to the date of payment (the "Upfront Payment"). The Upfront Payment may be prepaid at any time, in whole or in part, without penalty or premium.

b. For a five-year period starting on January 1, 2024, Defendants will pay Five Million, One Hundred Eighty-Seven Thousand Dollars (\$5,187,000), plus interest at 3.625% per annum pursuant to the Payment Schedule attached as Exhibit A (the "Payments Over Time"). The Payments Over Time may be prepaid at any time, in whole or in part, without penalty or premium.

c. On or before May 15 each year from 2025 to 2029, Defendants will pay the United States an amount equaling 50% of all Distributions made during the prior calendar year by SPRX, Inc. (“SPRX”) and/or B&G Smart Companies, LLC (“B&G”) to Balotin, including Distributions made to any persons or entities on Balotin’s behalf. For the purposes of this subparagraph, the term Distribution(s) shall mean monies paid to Balotin as an owner or member of either SPRX and/or B&G by virtue of his respective percentage of ownership or membership interest in said entity. Distributions shall not include any monies paid to Balotin for services performed to SPRX and/or B&G classified as wages or contracting income. For purposes of calculating the amount owed to the United States under this paragraph, Defendants may subtract the amount of pass-through taxes Balotin paid on behalf of SPRX and/or B&G, before calculating the United States’ 50% share of Balotin’s Distributions. Balotin will submit a signed certification to the United States each year from 2025 to 2029, at least fourteen (14) days before payment is due under this Paragraph identifying: (1) all persons or entities who received shareholder distributions from SPRX and/or B&G in the prior calendar year; (2) the amount each such person or entity received from SPRX and/or B&G, respectively, in the prior calendar year; and (3) the amount of such shareholder distributions that Balotin used to pay pass-through taxes for SPRX and/or B&G, in the prior calendar year.

d. If the property at 3740 St. Johns Bluff, Jacksonville, FL 32224 (the “St. Johns Bluff Property”) is sold in whole or in part on or before December 31, 2028, Balotin will within thirty (30) days of the transaction pay the United States 50% of Balotin’s Proceeds of the Transaction. For purposes of this subparagraph, Balotin’s Proceeds of the Transaction is defined as 50% of Net Proceeds. For purposes of this subparagraph, Net Proceeds is defined as the total proceeds of the sale of the St. Johns Bluff property less (1) any associated federal, state, or local tax payments (including any income taxes but not including capital gains taxes) and any

transaction fees or costs directly incurred by the seller in effectuating the sale of the St. Johns Bluff Property, and (2) the amount of repayment of the mortgage obligations on the St. Johns Bluff Property to Valley Bank, in an amount not to exceed \$2,800,000 (the amount owed to Valley Bank on the St. Johns Bluff Property mortgage as of the Effective Date of this agreement). The sale of the St. Johns Bluff Property must be for fair market value.

e. If the property located at 14003-1 Beach Boulevard, Jacksonville, FL 32224 (the “Beach Boulevard Property”) is sold for more than Two Million, Seven Hundred Fifty Thousand Dollars (\$2,750,000) on or before December 31, 2028, Balotin will within thirty (30) days of the transaction pay the United States 50% of Balotin’s Proceeds of the Transaction. For purposes of this paragraph, Balotin’s Proceeds of the Transaction is defined as 50% of Net Proceeds. For purposes of this subparagraph, the term Net Proceeds is defined as the total proceeds of the sale of the Beach Boulevard Property less (1) Three Hundred Forty-Three Thousand, Seven Hundred and Fifty Dollars (\$343,750), (2) any associated federal, state, or local tax payments (including any income taxes but not including capital gains taxes) and any transaction fees or costs directly incurred by the seller in effectuating the sale of the Beach Boulevard Property, and (3) the amount of repayment of the mortgage obligations on the St. Johns Bluff Property to Valley Bank, in an amount not to exceed \$2,800,000, (the amount owed to Valley Bank on the St. Johns Bluff Property mortgage as of the Effective Date of this agreement). The sale of the Beach Boulevard Property must be for fair market value.

f. If Healthy Mountain Farms, LLC, is sold on or before December 31, 2028, Balotin will pay the United States 50% of the Proceeds. For the purposes of this subparagraph, the term Proceeds is defined as the total proceeds of the sale of Healthy Mountain Farms, LLC, less any associated federal, state, or local tax payments (including any income taxes but not including capital gains taxes) and any transaction fees or costs directly incurred by the seller in

effectuating the sale of Healthy Mountain Farms, LLC. The Proceeds shall not be reduced due to repayment of debts that Healthy Mountain Farms, LLC, owes to Balotin, Smart Investment Partnership, LLLP, and/or any other entity owned directly or indirectly by Balotin. The sale of Health Mountain Farms, LLC, must be for fair market value.

g. All payments by Defendants under subparagraphs (a)-(f) up to Twenty-Six Million, Eight Hundred Eighty-Two Thousand, Eight Hundred and Thirteen Dollars and Thirty-Six Cents (\$26,882,813.36) constitutes restitution to the United States.

2. Subject to the exceptions in Paragraph 7 below (concerning reserved claims) and conditioned upon the full payment of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Defendants, together with their current and former direct or indirect corporate parents, and their predecessors, successors, and assigns of any of them, as well as all of its current and former officers, directors, employees, attorneys, and other agents from any and all liability, claims, allegations, demands, actions and causes of action whatsoever, known or unknown, in law or equity, that Relators have against Defendants, including but not limited to any civil monetary claim that Relators have on behalf of the United States for the Covered Conduct and the allegations in the Sanchez Civil Action, the Kohli Civil Action, and the First Amended Complaint in Intervention; except that Relators' claims for reasonable attorney's fees, expenses, and costs pursuant to 31 U.S.C. § 3730(d)(1) are not released. Counsel for the Relators expressly reserve their right to seek fees pursuant to 31 U.S.C. § 3730(d)(1) and all parties agree that the Court will retain jurisdiction if the parties cannot reach such an agreement.”

3. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, and subject to Paragraph 10 (concerning disclosure of assets), Paragraph 18 (concerning default), and Paragraph 19 (concerning bankruptcy) below, and upon the United States' receipt of the

Settlement Amount plus interest due under Paragraph 1, the United States releases Defendants 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.

4. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, and subject to Paragraph 10 (concerning disclosure of assets), Paragraph 18 (concerning default), and Paragraph 19 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, Relators, for themselves and for their respective heirs, successors, attorneys, agents, and assigns, release Defendants from any civil monetary claim Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. In consideration of the obligations of Balotin in this Agreement and the Integrity Agreement entered into between OIG-HHS and Balotin, and upon the United States' receipt of full payment of the Settlement Amount, plus interest due under Paragraph 1, the OIG-HHS shall 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 Balotin 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 this paragraph and in Paragraph 7 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Balotin 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 7, below.

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

7. Notwithstanding the releases given in Paragraph 3 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 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 of individuals other than Balotin;



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

8. Relators and their respective heirs, successors, attorneys, agents, and assigns shall not object to this Agreement and 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). In connection with this Agreement and this Civil Action, Relators and their heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relators from sharing in the proceeds of this Agreement. Moreover, the United States and Relators and their heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relators should receive of any proceeds of the settlement of their claims.

9. Relators, for themselves, and for their respective heirs, successors, attorneys, agents, and assigns, release Defendants and their officers, agents, and employees, from any liability to Relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

10. Defendants have provided sworn financial disclosures and supporting documents (together "Financial Disclosures") to the United States and the United States has relied on the

accuracy and completeness of those Financial Disclosures in reaching this Agreement.

Defendants warrant that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States learns of asset(s) in which Defendants had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy Defendants' obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by Defendants on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$300,000 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Defendants' previously undisclosed assets. Defendants agree not to contest any collection action undertaken by the United States pursuant to this provision and agree that they will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this Paragraph rescinds this Agreement, Defendants waive and agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Defendants that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on December 2, 2014, as to the copayment allegations against Smart Pharmacy and Balotin; June 13, 2019, as to copayment

allegations against SP2; and June 13, 2019, as to the aripiprazole allegations against Smart Pharmacy, SP2, and Balotin.

11. Defendants waive and shall not assert any defenses they 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.

12. Defendants fully and finally release 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 Defendants 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 or the United States' investigation or prosecution thereof.

13. Defendants fully and finally release the Relators from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relators related to the Covered Conduct and the Relators' investigation and prosecution thereof.

14. 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 contractor, or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor, TRICARE contractor, or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

15. Defendants agree 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. §§ 1395-1395III and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants or their 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) Defendants' 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;
- (5) the payments Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relators, including costs and attorneys' fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the Integrity Agreement to: (i) retain an independent review organization to perform annual reviews as described in Section III of the Integrity Agreement; 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 paragraph 15.a.(6)

that may apply to the obligations undertaken pursuant to the Integrity Agreement affects the status of costs that are not allowable based on any other authority applicable to Defendants.

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they 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 Defendants or any of their 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. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants 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 Defendants or any

of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Defendants' or any of their 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 Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

16. 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 17 (waiver for beneficiaries paragraph), below.

17. Defendants agree that they waive 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.

18. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct due solely to Defendants' financial condition as reflected in the Financial Disclosures referenced in Paragraph 10.

a. In the event that Defendants fail to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Defendants shall be in Default of their payment obligations ("Default"). The United States will provide a written Notice of Default, and Defendants shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the Payment Schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Defendants, or to such other

representative as they shall designate in advance in writing. If Defendants fail to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, Defendants shall consent to a Consent Judgment in the amount of the unpaid balance in the form attached hereto as Exhibit B; Defendants (and their affiliates Cosmo Strategic Investments, LLC, and A&S St. Johns, LLC) agree that the Consent Judgment may attach as a judgment lien on the Beach Boulevard Property and the St. Johns Bluff Property; and Defendants agree that, in the event of an Uncured Default, the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the releases provided in Paragraphs 3, 5, and 6 above, with any recovery reduced by the amount of any payments previously made by Defendants to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Defendants and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action,

Defendants agree immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, Defendants waive and agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against Defendants within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on December 2, 2014, as to the copayment allegations against Smart Pharmacy and Balotin; June 13, 2019, as to copayment allegations against SP2; and June 13, 2019, as to the aripiprazole allegations against Smart Pharmacy, SP2, and Balotin.

c. In the event of Uncured Default, OIG-HHS may exclude Defendants from participating in all Federal health care programs until Defendants pay the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Defendants. Defendants waive any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agree 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, Defendants wish to apply for reinstatement, they must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Defendants will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

19. In exchange for valuable consideration provided in this Agreement, Defendants and Relators acknowledge the following:



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

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

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

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

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the releases provided in Paragraph 3, 5, and 6 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Defendants in the amount of Two Hundred Twenty-Nine Million, Three Hundred Forty-Three Thousand, Six Hundred Twenty-Five Dollars and Thirty-Six Cents

(\$229,343,625.36), less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Defendants, or a receiver, trustee, custodian, or other similar official for Defendants;

(iii) if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States shall not be responsible for the return of any amounts already paid by the United States to the Relators; and

(iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relators are recovered from the United States in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment made under Paragraph 1 of this Agreement, Relators shall, within thirty days of written notice from the United States to the undersigned Relators' counsel, return to the United States all amounts recovered from the United States.

e. Defendants agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 19.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Defendants shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Defendants waive and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Defendants that the releases have been rescinded pursuant to this paragraph, except to the extent these defenses were

available on December 2, 2014, as to the copayment allegations against Smart Pharmacy and Balotin; June 13, 2019, as to copayment allegations against SP2; and June 13, 2019, as to the aripiprazole allegations against Smart Pharmacy, SP2, and Balotin.

20. Upon receipt of the payment of the Upfront Payment as defined in Paragraph 1.a., above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

21. Except as provided in Paragraph 2, above, 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 into this Agreement without any degree of duress or compulsion.

23. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Middle District of Florida. 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. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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 Defendants' respective successors, transferees, heirs, and assigns.

28. This Agreement is binding on Relators' respective successors, transferees, heirs, and assigns.

29. All Parties consent to the United States' 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 and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**THE UNITED STATES OF AMERICA**

DATED: 6.14.2023 BY: Nicholas C. Perros  
NICHOLAS C. PERROS  
JESSICA R. SIEVERT  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 6/14/2023 BY: Collette B. Cunningham  
COLLETTE B. CUNNINGHAM  
Assistant United States Attorney  
Middle District of Florida

DATED: 6/14/23 BY: Holly H. Snow  
HOLLY H. SNOW  
Assistant United States Attorney  
Western District of North Carolina

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
LISA M. RE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
SALVATORE M. MAIDA  
General Counsel  
Defense Health Agency  
United States Department of Defense

**THE UNITED STATES OF AMERICA**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
NICHOLAS C. PERROS  
JESSICA R. SIEVERT  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
COLLETTE B. CUNNINGHAM  
Assistant United States Attorney  
Middle District of Florida

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
HOLLY H. SNOW  
Assistant United States Attorney  
Western District of North Carolina

DATED: \_\_\_\_\_

BY: **LISA RE**  Digitally signed by LISA RE  
Date: 2023.06.14 16:24:56  
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LISA M. RE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
SALVATORE M. MAIDA  
General Counsel  
Defense Health Agency  
United States Department of Defense

**THE UNITED STATES OF AMERICA**

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BY: \_\_\_\_\_  
NICHOLAS C. PERROS  
JESSICA R. SIEVERT  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
COLLETTE B. CUNNINGHAM  
Assistant United States Attorney  
Middle District of Florida

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
HOLLY H. SNOW  
Assistant United States Attorney  
Western District of North Carolina

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LISA M. RE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: 06/14/2023

BY: BLEY.PAUL.NICHOLAS.1099873821  
Digitally signed by  
BLEY.PAUL.NICHOLAS.1099873821  
Date: 2023.06.14 15:54:47 -04'00'  
LAS.1099873821  
SALVATORE M. MAIDA  
for General Counsel  
Defense Health Agency  
United States Department of Defense

DEFENDANTS SMART PHARMACY, SP2, AND BALOTIN

DATED: 6/14/23

BY: \_\_\_\_\_


GREGORY H. BALOTIN  
on behalf of himself, Smart Pharmacy, SP2

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

WILLIAM SCROGINS  
on behalf of Smart Pharmacy and SP2

DATED: 6/14/23

BY: 

ADAM P. SCHWARTZ  
Counsel for Smart Pharmacy, SP2,  
and Balotin

COSMO STRATEGIC INVESTMENTS, LLC AND A&S ST. JOHNS, LLC

DATED: 6/14/23

BY: \_\_\_\_\_

GREGORY H. BALOTIN  
on behalf of Cosmo Strategic Investments, LLC and A&S  
St. Johns, LLC

DATED: \_\_\_\_\_

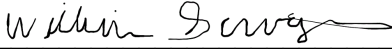
BY: \_\_\_\_\_

WILLIAM SCROGINS  
on behalf of Cosmo Strategic Investments, LLC and A&S  
St. Johns, LLC



**DEFENDANTS SMART PHARMACY, SP2, AND BALOTIN**

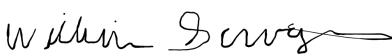
DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
GREGORY H. BALOTIN  
on behalf of himself, Smart Pharmacy, SP2

DATED: 6/14/2023 BY:   
WILLIAM SCROGINS  
on behalf of Smart Pharmacy and SP2

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
ADAM P. SCHWARTZ  
Counsel for Smart Pharmacy, SP2,  
and Balotin

**COSMO STRATEGIC INVESTMENTS, LLC AND A&S ST. JOHNS, LLC**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
GREGORY H. BALOTIN  
on behalf of Cosmo Strategic Investments, LLC and A&S  
St. Johns, LLC

DATED: 6/14/2023 BY:   
WILLIAM SCROGINS  
on behalf of Cosmo Strategic Investments, LLC and A&S  
St. Johns, LLC

**RELATOR AMY SANCHEZ**


DATED: 6-14-23

BY:

  
AMY SANCHEZ

DATED: 6-14-23

BY:

  
MANUEL L. DOBRINSKY  
Counsel for Amy Sanchez

**RELATOR ASHOK KOHLI**

DATED: \_\_\_\_\_

BY:

\_\_\_\_\_  
ASHOK KOHLI

DATED: \_\_\_\_\_

BY:

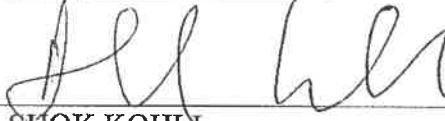
\_\_\_\_\_  
STEVEN J. CALVACCA  
Counsel for Ashok Kohli


**RELATOR AMY SANCHEZ**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
AMY SANCHEZ

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
MANUEL L. DOBRINSKY  
Counsel for Amy Sanchez

**RELATOR ASHOK KOHLI**

DATED: 6-14-23 BY:   
ASHOK KOHLI

DATED: 6-14-23 BY:   
STEVEN J. CALVACCA  
Counsel for Ashok Kohli

**EXHIBIT A:**  
**PAYMENT SCHEDULE**

Payment Date	Payment	3.625% Interest	Principal	Balance
				<b>\$7,400,000.00</b>
7/14/2023	\$2,279,878.77	\$66,878.77	\$2,213,000.00	\$5,187,000.00
1/1/2024	\$726,925.03	\$87,575.03	\$639,350.00	\$4,547,650.00
4/1/2024	\$280,563.08	\$41,213.08	\$239,350.00	\$4,308,300.00
7/1/2024	\$278,393.97	\$39,043.97	\$239,350.00	\$4,068,950.00
10/1/2024	\$276,224.86	\$36,874.86	\$239,350.00	\$3,829,600.00
1/1/2025	\$274,055.75	\$34,705.75	\$239,350.00	\$3,590,250.00
4/1/2025	\$271,886.64	\$32,536.64	\$239,350.00	\$3,350,900.00
7/1/2025	\$269,717.53	\$30,367.53	\$239,350.00	\$3,111,550.00
10/1/2025	\$267,548.42	\$28,198.42	\$239,350.00	\$2,872,200.00
1/1/2026	\$265,379.31	\$26,029.31	\$239,350.00	\$2,632,850.00
4/1/2026	\$263,210.20	\$23,860.20	\$239,350.00	\$2,393,500.00
7/1/2026	\$261,041.09	\$21,691.09	\$239,350.00	\$2,154,150.00
10/1/2026	\$258,871.98	\$19,521.98	\$239,350.00	\$1,914,800.00
1/1/2027	\$256,702.88	\$17,352.88	\$239,350.00	\$1,675,450.00
4/1/2027	\$254,533.77	\$15,183.77	\$239,350.00	\$1,436,100.00
7/1/2027	\$252,364.66	\$13,014.66	\$239,350.00	\$1,196,750.00
10/1/2027	\$250,195.55	\$10,845.55	\$239,350.00	\$957,400.00
1/1/2028	\$248,026.44	\$8,676.44	\$239,350.00	\$718,050.00
4/1/2028	\$245,857.33	\$6,507.33	\$239,350.00	\$478,700.00
7/1/2028	\$243,688.22	\$4,338.22	\$239,350.00	\$239,350.00
10/1/2028	\$241,519.11	\$2,169.11	\$239,350.00	\$0.00
<b>Total</b>	<b>\$7,966,584.59</b>	<b>\$566,584.59</b>	<b>\$7,400,000.00</b>	

**EXHIBIT B:**  
**CONSENT JUDGMENT**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No.

SMART PHARMACY, INC.; SP2,  
LLC; and GREGORY H. BALOTIN

Defendants.

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**CONSENT JUDGMENT**

Plaintiff United States of America and Defendants Smart Pharmacy, Inc., SP2, LLC, and Gregory H. Balotin (collectively “Defendants”), by and through the undersigned counsel, consent to the entry of this judgment based upon the following uncontested allegations:

1. This Court has jurisdiction over this case under 31 U.S.C. §§ 3732(a), 3237(b), and 28 U.S.C. §§ 1331, 1345, 1367(a). Defendants consent to the jurisdiction of the United States District Court for the Middle District of Florida for the resolution of this dispute.

2. On June \_\_\_\_, 2023, Defendants entered into a settlement agreement with Plaintiff United States for the purpose of resolving allegations under the False Claims Act, 31 U.S.C. § 3729 *et seq.* and common law causes of action (“the Settlement Agreement”). A copy of the Settlement Agreement is attached hereto as Exhibit A and incorporated by reference herein.

3. Under the terms of the Settlement Agreement, Defendants agreed to pay to the United States the total sum of \$7,400,000 plus interest accrued thereon on the unpaid balance at the rate of 3.625 percent per annum from April 14, 2023, and continuing until and including the day before the final payment is made (“Settlement Amount”). In addition, Defendants agreed to make additional payments in the event that certain contingencies were met. Defendants agreed to pay the Settlement Amount by paying \$2,213,000 within 30 days of the Effective Date of the Settlement Agreement (*i.e.*, June \_\_\_\_, 2023) and the remaining balance plus interest in quarterly installments over a five year period as set forth in Attachment A to the Settlement Agreement.

4. Under the terms of the Settlement Agreement, the United States and the Relators agreed, upon payment of the initial payment of \$2,213,000 plus interest, to file a Stipulation of Dismissal pursuant to Fed. R. Civ. P. 41(a)(1).

5. Under the terms of the Settlement Agreement, Defendants agreed that in the event of their failure to pay the amounts set forth in the Settlement Agreement, the dismissals of Defendants, at the United States’ option, would be null and void.

6. Under the terms of the Settlement Agreement, Defendants agreed that in the event that they defaulted by failing to pay the Settlement Amount, within seven (7) days of the failure to cure the default, the remaining unpaid balance of the Settlement Amount would become immediately due and payable, and interest would accrue at the rate of 12 percent per annum, compounded daily from the date of default, on the remaining unpaid total (principal and interest balance).

7. Under the terms of the Settlement Agreement, Defendants agreed that in the event that they defaulted by failing to pay the Settlement Amount, within seven (7) days of the failure to cure the default, the United States would have the right to file a Consent Judgment against Defendants, in the amount of the remaining unpaid balance owed under the terms of the Settlement Amount.

8. Defendants failed to make payments in accordance with the Settlement Agreement, and therefore is in default under the terms of the Settlement Agreement.

9. Within a reasonable time after the filing of this Consent Judgment, the United States will file a statement of debt showing the amount due and owing under the Settlement Agreement as of the date of default.

10. The United States has delivered to Defendants proper written notice of default under the terms of the Settlement Agreement and demanded that Defendants cure that default. The United States has given Defendants seven (7) days to cure the default, as provided in the Settlement Agreement, but Defendants have failed to make arrangements to comply with the terms of the Settlement Agreement.

Accordingly, this Court enters judgment for the United States against Defendants, in the amount of \$\_\_\_\_\_, plus interest at the post-judgment rate of interest from the date this Consent Judgment is entered until it is satisfied.

SO ORDERED THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_

UNITED STATES DISTRICT JUDGE