

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 Gisele Thao Nguyen (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Gisele Thao Nguyen (“Nguyen”) is a pharmacist who resides in Huntington Beach, California. Nguyen was the sole owner of Gisele Nguyen, Inc. d/b/a Natico Pharmacy, a community pharmacy that operated in Garden Grove, California. Natico Pharmacy ceased operating in December 2018.

C. The United States contends that Nguyen, by and through Natico Pharmacy, 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”).

D. The United States contends that it has certain civil claims against Nguyen arising from her having submitted, or having caused the submission of, claims to the Medicare Program for reimbursement for pharmaceuticals that were either never purchased or never dispensed to Medicare beneficiaries. Specifically, the United States contends that from at least January 1, 2014, through December 31, 2018, Nguyen, by and through Natico Pharmacy, submitted or caused the submission of claims for reimbursement to the Medicare Program for pharmaceuticals in the specific dosages and units listed in Appendix A that were not actually purchased from wholesalers or dispensed to Medicare beneficiaries. This conduct is referred to below as the “Covered Conduct.”

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

F. 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. Nguyen shall pay to the United States three million, nine hundred thirty three thousand, nine hundred and ninety three dollars (\$3,933,993.00) ("Settlement Amount"), all of which is restitution to the United States. She shall pay one million dollars (\$1,000,000.00) no later than twenty (20) 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.

a. Over a period of three (3) years, Nguyen will pay the remaining two million, nine hundred thirty three thousand, nine hundred and ninety three dollars (\$2,933,993.00), plus interest of 3.375% per annum, pursuant to the payment schedule attached as Attachment B (the "Payments Over Time").

b. Interest shall accrue on the unpaid settlement amount as indicated in Attachment B. Collectively, the settlement amount and interest received by the United States shall be referred to as the Settlement Payments.

c. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and subject to Paragraph 10 (concerning default), and Paragraph 11 (concerning bankruptcy) below,

and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, the United States releases Nguyen from any civil or administrative monetary claims the United States has for the Covered Conduct under the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the releases given in Paragraph 2 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. Any administrative liability or enforcement right, 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 of individuals other than Nguyen;
- 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 personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Nguyen waives and shall not assert any defenses that she 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.

5. Nguyen 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 she 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.

6. 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 other federal payer or state payer, related to the Covered Conduct; and Nguyen agrees not to resubmit to any Medicare contractor or any other federal payer or 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.

7. Nguyen 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 Nguyen or Natico Pharmacy or its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

(2) the United States' audits and investigations of the matters covered by this Agreement;

(3) Nguyen's investigation, defense, and corrective actions undertaken in response to the United States' audits and investigations in connection with the matters covered by this Agreement (including attorneys' fees);

(4) the negotiation and performance of this Agreement; and

(5) the payments Nguyen makes to the United States 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 by Nguyen, and she 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 Nguyen or Natico Pharmacy or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Nguyen further agrees that within 90 days of the Effective Date of this Agreement she 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 Nguyen or Natico Pharmacy 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. Nguyen agrees that the United States, at a minimum, shall be entitled to recoup from her 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 Nguyen or Natico Pharmacy or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on the cost reports, cost statements, or information reports of Nguyen or Natico Pharmacy or any of its subsidiaries or affiliates.

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

8. 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 9 (waiver for beneficiaries paragraph), below.

9. Nguyen agrees that she 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.

10. In the event that Nguyen fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Nguyen shall be in Default of her payment obligations ("Default").

a. The United States will provide a written Notice of Default, and Nguyen 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 Agreement up to the date of payment. Notice of Default will be delivered to Nguyen, or to such other representative as she shall designate in advance in writing. If Nguyen fails 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, Nguyen agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and bring any civil and/or administrative claim, action, or proceeding against her for the claims that would otherwise be covered by the releases provided in Paragraph 2 above, with any recovery reduced by the amount of any payments previously made by Nguyen to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action; (iii) offset the remaining unpaid balance from any amounts due and owing to Nguyen 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, Nguyen agrees 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, Nguyen waives and agrees 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 (i) are filed by the United States against Nguyen 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 the Effective Date of the Agreement. Nguyen agrees not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

c. In the event of Uncured Default, OIG-HHS may exclude Nguyen from participating in all Federal health care programs until she pays the Settlement Amount, with interest, as set forth above ("Exclusion for Default"). OIG-HHS will provide written notice of any such exclusion to Nguyen. Nguyen 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, Nguyen wishes to apply for reinstatement, she must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Nguyen 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.

11. In exchange for valuable consideration provided in this Agreement, Nguyen acknowledges the following:

a. Nguyen has reviewed her financial situation and warrants that she 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 United States of the Settlement Amount.

b. 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 Nguyen, 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.

c. 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.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Nguyen 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).

e. If any of Nguyen's 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, Nguyen or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Nguyen's debts, or to adjudicate Nguyen as bankrupt or insolvent; or seeking appointment of a

receiver, trustee, custodian, or other similar official for Nguyen or for all or any substantial part of her assets:

(1) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Nguyen for the claims that would otherwise be covered by the releases provided in Paragraph 2 above;

(2) the United States has an undisputed, noncontingent, and liquidated allowed claim against Nguyen in the amount of three times the Settlement Amount, plus penalties and interest, 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 Nguyen, a receiver, trustee, custodian, or other similar official for Nguyen;

f. Nguyen agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 11.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. Nguyen 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). Nguyen waives 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 Nguyen that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of this Agreement.

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

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

14. 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 Central District of California. 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.

15. 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.

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

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

18. This Agreement is binding on Nguyen's successors, transferees, heirs, and assigns.

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

20. 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: 3-10-23

BY: *Jennifer L. Cihon*
Jennifer L. Cihon
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

GISELE THAO NGUYEN

DATED: 3/10/2023

BY:


GISELE THAO NGUYEN

DATED: 3/10/2023

BY:


MICHAEL KHOURI
Counsel for Gisele Thao Nguyen

ATTACHMENT A

Drug Name/Strength
ADVAIR DISKU AER 100/50
ADVAIR DISKU AER 250/50
ADVAIR DISKU AER 500/50
BENICAR TAB 20MG
BENICAR TAB 40MG
BENICAR TAB 5MG
BEPREVE DRO 1.5%
BETAMETH DIP CRE 0.05%
BETAMETH DIP LOT 0.05%
BETAMETH DIP OIN 0.05%
CELEBREX CAP 100MG
CELEBREX CAP 200MG
CELECOXIB CAP 100MG
CELECOXIB CAP 200MG
COLCRYS TAB 0.6MG
CREON CAP 12000UNT
CREON CAP 24000UNT
CREON CAP 36000UNT
CRESTOR TAB 10MG
CRESTOR TAB 20MG
CRESTOR TAB 5MG
DEXILANT CAP 30MG DR
DEXILANT CAP 60MG DR
EXELON DIS 4.6MG/24
EXELON DIS 9.5MG/24
FLOVENT HFA AER 110MCG
FLOVENT HFA AER 220MCG
HUMIRA PEN INJ 40MG/0.8
ILEVRO DRO 0.3% OP
INVOKANA TAB 100MG
INVOKANA TAB 300MG
JANUVIA TAB 100MG
JANUVIA TAB 25MG.
JANUVIA TAB 50MG
LANTUS SOLOS INJ 100/ML
LIDOCAINE OIN 5%
LIDOCAINE PAD 5%
LIDODERM DIS 5%

Drug Name/Strength	
LINZESS	CAP 145MCG
LINZESS	CAP 290MCG
LINZESS	CAP 72MCG
LUMIGAN	SOL 0.01%
LYRICA	CAP 100MG
LYRICA	CAP 150MG
LYRICA	CAP 50MG
LYRICA	CAP 75MG
NASONEX	SPR 50MCG/AC
NEXIUM	CAP 40MG
NOVOLOG	INJ FLEXPEN
OMEGA-3-ACID	CAP 1GM
PATADAY	SOL 0.2%
PREMARIN	TAB 0.625MG
PREMARIN	VAG CRE 0.625MG
PROLENSA	SOL 0.07%
RESTASIS	EMU 0.05%
RIVASTIGMINE	CAP 1.5MG
RIVASTIGMINE	CAP 3MG
RIVASTIGMINE	DIS 4.6MG/24
RIVASTIGMINE	DIS 9.5MG/24
SPIRIVA	CAP HANDIHLR
SYMBICORT	AER 160-4.5
SYMBICORT	AER 80-4.5
TRADJENTA	TAB 5MG
ULORIC	TAB 40MG
ULORIC	TAB 80MG
VASCEPA	CAP 1GM
VESICARE	TAB 10MG
VESICARE	TAB 5MG
VIREAD	TAB 300MG
VOLTAREN	GEL 1%
WELCHOL	PAK 3.75GM
WELCHOL	TAB 625MG
XIIDRA	DRO 5%

ATTACHMENT B

Year	Payment Due Date	Principal	Interest	Total Payment Due	Balance
			3.375%		\$2,933,993.00
1	2/7/2024	\$1,000,000.00	\$99,022.26	\$1,099,022.26	\$1,933,993.00
2	2/7/2025	\$1,000,000.00	\$65,272.26	\$1,065,272.26	\$933,993.00
3	2/7/2026	\$933,993.00	\$31,522.26	\$ 965,515.26	---
	Total	\$2,933,993.00	\$195,816.78	\$3,129,809.78	

3/10/2024
3/10/2025
3/10/2026

