SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into among the United States of America, acting through the United States Department of Justice and its Drug Enforcement Administration ("DEA") (collectively the "United States"), and Tick Klock Drug, LLC (herein "Tick Klock Drug"), (hereinafter collectively referred to as "the Parties"), through their authorized representatives.

I. FACTUAL RECITALS

A. Tick Klock Drug, located in Colfax, Washington, is a retail pharmacy that, since 1966, has been owned by the Johnson Family. In January 2023, Nathan Johnson, a pharmacist licensed in Washington State, and Kim Johnson, purchased Tick Klock Drug from Nathan's parents Mark and Robyn Johnson. Tick Klock Drug dispenses prescription medications, including controlled substances.

B. In order to protect the public and public health, the Controlled Substances Act, 21 U.S.C. §§ 801 *et seq*., and implementing regulations promulgated by the DEA (hereinafter collectively "the CSA"), place duties and responsibilities on medical professionals to ensure that controlled substances are prescribed, dispensed, and used for medically-appropriate purposes and in a safe manner. Under the CSA, the responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. 21 C.F.R. § 1306.04. Accordingly, by law, a pharmacy has a corresponding responsibility to ensure that prescriptions are legitimate and medically appropriate. *Id.*

C. Additionally, the Combat Methamphetamine Epidemic Act of 2005 (CMEA) and implementing regulations impose limitations on the amount of pseudoephedrine that a pharmacy may sell to an individual over a 30-day period. Pseudoephedrine, sold under the brand name Sudafed, is a decongestant that can be used to manufacture methamphetamine, a Schedule II controlled substance and commonly-abused street drug. The CMEA also requires pharmacies to maintain records, to train employees concerning safe dispensing and sale of pseudoephedrine, and to annually certify compliance with CMEA requirements and regulations.

D. At times, between January 1, 2022 and July 6, 2022, Tick Klock Drug and its pharmacists and employees did not always appropriately exercise its corresponding responsibility

in filling prescriptions for controlled substances. At time, Tick Klock filled prescriptions written by physicians or other medical providers that contained "red flags", *i.e.,* indicia of fraud, drug-seeking, lack of medical necessity, potential for abuse or health risk, or potential for diversion, without appropriately resolving those red flags prior to dispensing. These red flags included patients for whom Tick Klock Drug filled prescriptions for a potentially dangerous and medically-inappropriate combination of an opioid, a benzodiazepine, and a muscle relaxant known as the "holy trinity".

E. Additionally, between July 1, 2017 and July 8, 2022, Tick Klock Drug violated the CMEA by: (1) failing to certify compliance with the CMEA and implementing regulations; (2) failing to prominently display required warning notices in all appropriate locations; and (3) failing to obtain all purchaser signatures for sales of pseudoephedrine, including for sales by Tick Klock Drug employees.

F. Tick Klock Drug has cooperated and indicates that it intends to continue to cooperate with the United States' investigation. Further, Tick Klock Drug has undertaken, and agrees to continue to undertake, corrective actions and proactive steps in order to address and prevent the recurrence of the conduct set forth at Recitals A through E, as further set forth in the separate Memorandum of Agreement between Tick Klock Drug and the DEA.

G. The United States contends that it has certain civil and administrative claims under the Controlled Substances Act, Chapter 21, United States Code, and its implementing regulations against Tick Klock Drug, as further set forth in Paragraphs A through E above. That conduct, and the United States' claims and allegations that Tick Klock Drug violated 21 U.S.C. § 842(a)(2), and regulations promulgated thereunder, and that therefore are liable for an assessment of civil penalties for each violation, pursuant to 21 U.S.C. § 842(c)(1)(A) and 28 C.F.R. § 85.5, are hereinafter referred to as the "Covered Conduct."

H. While Tick Klock Drug agrees to, admits, and wishes to accept responsibility for the factual recitations in Paragraphs A through E above, this Settlement Agreement is not an admission of legal liability by Tick Klock Drug. Tick Klock Drug acknowledges and understands that it had and continues to have the obligation to comply with the Controlled Substance Act, Chapter 21, United States Code, the CMEA, and the regulations promulgated thereunder. Tick Klock Drug represents that it will comply with these obligations from this point forward, and further represents that it has taken additional steps to ensure its compliance with those requirements, and with

Washington state law, going forward.

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

II. TERMS OF AGREEMENT

1. Tick Klock Drug shall pay the United States Twenty Thousand Dollars ($20,000) (the "Settlement Amount"). Payment in full shall be made within fourteen business (14) days of the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney for the Eastern District of Washington.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims), and conditioned upon Tick Klock Drug's full payment of the Settlement Amount under this agreement, the United States releases Tick Klock Drug from any civil or administrative monetary claim the United States has for the Covered Conduct under the Controlled Substances Act, and its implementing regulations.

3. Notwithstanding the releases given in paragraph 2 of this Agreement or any other term of this Agreement, the following claims 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, 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; and

f. Any liability of individuals not a party to this Agreement.

4. Tick Klock Drug waives and shall not assert any defenses Tick Klock Drug may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this

Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

5. Tick Klock Drug releases the United States and its agencies, officers, agents, employees, and servants, from any claims (including for attorneys' fees, costs, and expenses of any kind and however denominated) that Tick Klock Drug has asserted, could have asserted, or may assert in the future against the United States or its agencies, officers, agents, employees, or servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. Tick Klock Drug 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-l395kkk-l and 1396- 1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Tick Klock Drug, in connection with:

(1) the matters covered by this Agreement;

(2) the United States' audit(s) and investigation(s) of the matters covered by this Agreement;

(3) Tick Klock Drug's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

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

(5) the payments Tick Klock Drug 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 for by Tick Klock Drug, and Tick Klock Drug 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 Tick Klock Drug to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Tick Klock Drug further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Tick Klock Drug 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. Tick Klock Drug agrees that the United States, at a minimum, shall be entitled to recoup from Tick Klock Drug 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 Tick Klock Drug on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Tick Klock Drug' cost reports, cost statements, or information reports.

7. 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.

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

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

10. 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 Washington. 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.

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

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

13. This Agreement shall become final and binding only upon signing by all parties hereto.

14. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall together constitute one and the same agreement, and for purposes of this agreement, facsimile signatures shall be treated as equivalent to originals.

15. This Agreement is binding on Tick Klock Drug' successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: 7/31/2023 BY: 

Dan Fruchter
Assistant United States Attorney
Eastern District of Washington

DATED: 7/31/2023 

Tyler Tornabene
Assistant United States Attorneys
Eastern District of Washington

TICK KLOCK DRUG

DATED: 7/28/23 BY: 

Nathan Johnson
Owner
Tick Klock Drug

DATED: July 31, 2023 BY: 

Jeffrey R. Galloway
Witherspoon Brajcich McPhee, PLLC
Counsel for Tick Klock Drug