

## 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 Ferry County Public Hospital District (including Ferry County Health and Ferry County Memorial Hospital) (herein "Ferry County"), (hereinafter collectively referred to as "the Parties"), through their authorized representatives.

### Recitals

A. Republic Drug Store, located in Republic, Washington, is a retail pharmacy that, between 1904 and January 2021, was owned by the Slagle Family, including, as of January 2021, by Patricia and Robert Slagle ("the Slagles"), who are both pharmacists licensed in Washington State. In January 2021, Ferry County purchased Republic Drug Store from the Slagles, and has owned and operated it since that time.

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. Between October 6, 2017, and November 27, 2021, Republic Drug Store and its pharmacists and employees did not always appropriately exercise their corresponding responsibility in filling prescriptions for controlled substances. At times, Republic Drug Store filled prescriptions that contained various "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.

D. These red flags included numerous patients for whom Republic Drug Store filled prescriptions for: (1) potentially dangerous combinations of controlled substances simultaneously prescribed, including “holy trinity” (an opioid, benzodiazepine, and muscle relaxant taken in tandem); “speedball” (an opioid and a stimulant); “gaba trinity” (opioid, benzodiazepine, and anticonvulsant); “z-class trinity” (opioid, benzodiazepine, and sedative); “zolpidem trinity,” (opioid, benzodiazepine, and anti-insomniac); and “oxymethadone” (oxycodone and methodone); (2) high-dose opioids, including patients prescribed opioids in doses of up to 540 daily morphine milligram equivalents, many times the maximum dosages recommended by guidelines promulgated by the United States Centers for Disease Control (CDC); (3) fraudulent prescriptions purportedly issued by a prescribing physician who was no longer practicing and did not have an active DEA registration to prescribe controlled substances; (4) early refill prescriptions for opioids and other controlled substances with no explanation of why the patient needed an early refill filled by Republic Drug Store more than 7 days before the patient’s prior month’s prescription should have run out; (5) prescriptions written by physicians who had their medical licenses and/or DEA registrations revoked or suspended for prescribing habits; (6) prescriptions for controlled substances written by a naturopathic doctor who did not have the medical authority to prescribe controlled substances.

E. Ferry County has cooperated with the United States’ investigation and has taken proactive steps to address the conduct described above to ensure that it does not recur. Those steps are further set forth in detail in the separate Memorandum of Agreement (MOA) between DEA and Ferry County.

F. Ferry County acknowledges that the facts set forth above in these recitals are true and accurate. Ferry County further acknowledges and understands that it had and continues to have the obligation to comply with the Controlled Substance Act, Chapter 21, United States Code, and the regulations promulgated thereunder. Ferry County 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.

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 Ferry County relative to the prior conduct of Republic Drug Store, as further set forth in Recitals A through D above. That conduct, and the United States' claims and allegations that Republic Drug Store and Ferry County 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. 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 of Agreement**

1. Ferry County shall pay the United States \$15,000 (the Settlement Amount). Payment in full shall be made within twenty-one (21) 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 Ferry County's full payment of the Settlement Amount under this agreement, the United States releases Ferry County 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. Ferry County waives and shall not assert any defenses Ferry County 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. Ferry County 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 Ferry County 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. Ferry County 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Ferry County, 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) Ferry County'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 Ferry County 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 Ferry County, and Ferry County 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 Ferry County to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Ferry County 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 Ferry County 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. Ferry County agrees that the United States, at a minimum, shall be entitled to recoup from Ferry County 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 Ferry County on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Ferry County's 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 regarding Ferry County's liability for the Covered Conduct. The Parties acknowledge that Ferry County and the DEA have also entered into a Memorandum of Understanding as part of Ferry County's corrective actions. 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 to execute 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 Ferry County's 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: 9/29/23 BY: \_\_\_\_\_

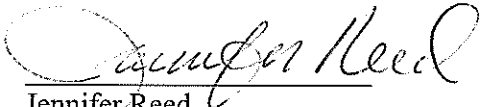
  
\_\_\_\_\_  
Dan Fruchter  
Assistant United States Attorney  
Eastern District of Washington

DATED: 9-29-2023

  
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Tyler Tornabene  
Assistant United States Attorneys  
Eastern District of Washington

FERRY COUNTY PUBLIC HOSPITAL DISTRICT

DATED: 9/27/23

BY:   
Jennifer Reed  
Chief Executive Officer  
Ferry County Public Hospital District

DATED: 9-29-23

BY: *s/Markus W. Louvier*  
Markus W. Louvier  
Evans, Craven, & Lackie P.S.  
Counsel for Ferry County