

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”) (collectively, the “United States”); Benzer Pharmacy Holding, LLC, Berkley Pharmacy, LLC, RX Care Four, LLC, (collectively, “Benzer,” or the “Defendants”); and Rebecca Socol (the “Relator”), through their authorized representatives (together, “the Parties”).

RECITALS

A. Benzer Pharmacy Holding, LLC is a Florida limited liability company that operated a specialty pharmacy located in Tampa, FL, and managed Benzer Pharmacy franchises. Benzer Pharmacy Holding, LLC is winding down its business and will no longer be operational or submit claims to Federal health care programs within 90 days of settlement.

B. Berkley Pharmacy, LLC is a Michigan limited liability company that operated a specialty pharmacy located in Warren, MI. Berkley Pharmacy, LLC is now defunct and does not submit claims to Federal health care programs.

C. RX Care Four, LLC is a Florida limited liability company that operated a specialty pharmacy located in Palm Bay, Florida. RX Care Four, LLC is now defunct and does not submit claims to Federal health care programs.

D. Evzio was the brand name for an injectable form of naloxone hydrochloride that kaléo, Inc manufactured and marketed. Evzio was one of several naloxone products on the market indicated for use on an emergent basis in the case of opioid overdose. During the relevant period, Evzio was the highest-priced version of naloxone on the market, and insurers frequently required the submission of prior authorization requests before they would approve coverage for Evzio.

E. On January 10, 2018, Relator filed an action in the United States District Court for the District of Massachusetts with docket number 18-cv-10050-RGS, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator filed an amended complaint on August 8, 2018. The Civil Action alleges, among other things, that the Defendants submitted false claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395III (“Medicare”), for Evzio, by using materially false statements and documents to obtain favorable prior authorization determinations for Evzio, by filling Evzio prescriptions that were not medically necessary, and by submitting claims that were tainted by violations of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b).

F. Separately, two Benzer affiliates will enter criminal resolutions with the Department of Justice. OHM Pharmacy Services, Inc. will plead guilty to one count of healthcare fraud, 18 U.S.C. § 1347, for submitting false Evzio prior authorization requests, and Benzer Pharmacy Holding, LLC will enter into a Deferred Prosecution Agreement with the United States Attorney’s Office for the District of Massachusetts in which Benzer Pharmacy Holding, LLC will admit that it submitted false Evzio prior authorization requests to insurers in violation of 18 U.S.C. § 1347.

G. The United States contends that it has certain civil claims against Defendants for submitting or causing the submission of false claims to Medicare during the period from September 1, 2016 to March 29, 2019 in connection with the conduct described in Paragraph H below.

H. Defendants admit, acknowledge, and accept responsibility for the following facts:

1. The Defendants employed several individuals who held the title Patient Assistance Specialists (“PA Specialists”). Among other duties, PA Specialists worked on completing and submitting prior authorization requests for Evzio, as well as certain dermatological products and other drugs. As part of the prior authorization process, government insurers, including Medicare Part D plans, required the submission of clinical information regarding the beneficiary prior to a coverage determination. Insurers

and Part D plans often required this clinical information to be provided directly by representatives of the prescribing physician's office.

2. The Defendants' PA Specialists completed Evzio prior authorization forms in place of the prescribing physicians, including instances in which PA Specialists signed the prior authorization forms without the physician's authorization. The Defendants then submitted the forms to insurers—including to Medicare Part D plans—as if the Defendants were the physician. On dozens of Evzio prior authorization request forms, the Defendants listed Benzer fax numbers where PA forms requested the prescribing physician's fax number. The Defendants did so to ensure that insurers would contact them—and not the listed prescribing physician—when communicating about the prior authorization request.

3. In addition to purporting to be the physician's office, the Defendants submitted Evzio prior authorization requests to insurers that contained false clinical information to secure approval of the prior authorization and payment for the more expensive drug. For example, the Defendants filled out and submitted dozens of Evzio prior authorization request forms that falsely asserted that patients had previously tried and failed both Narcan and naloxone. Furthermore, the Defendants falsely stated on Evzio prior authorization request forms that patients had shaky hands or nasal problems.

4. Government insurers, including Medicare Part D plans, approved false Evzio prior authorization requests that the Defendants submitted. The Defendants understood that had the insurers known that the forms contained false information, they would not have authorized and paid for the prescriptions.

5. The Defendants failed to adequately oversee and train staff responsible for prior authorization requests.

The conduct described in Paragraphs G and H shall hereinafter be referred to as the "Covered Conduct."

I. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees, and costs.

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 \$1,018,000, plus interest accruing at an annual rate of 4.0% per annum from January 29, 2024, and continuing until and including the

day of payment (the “Settlement Amount”). Defendants shall pay the Settlement Amount according to the following schedule:

- A. Defendants shall pay the United States \$150,000 plus accrued interest on the outstanding Settlement Amount balance on or before May 31, 2024.
- C. Defendants shall pay the United States \$300,000 plus accrued interest on the outstanding Settlement Amount balance on or before September 30, 2024.
- D. Defendants shall pay the United States \$150,000 plus accrued interest on the outstanding Settlement Amount balance on or before December 30, 2024.
- E. Defendants shall pay the United States \$104,500 plus accrued interest on the outstanding Settlement Amount balance on or before March 31, 2025.
- F. Defendants shall pay the United States \$104,500 plus accrued interest on the outstanding Settlement Amount balance on or before March 31, 2026.
- G. Defendants shall pay the United States \$104,500 plus accrued interest on the outstanding Settlement Amount balance on or before March 31, 2027.
- H. Defendants shall pay the United States \$104,500 plus accrued interest on the outstanding Settlement Amount balance on or before March 31, 2028.

Defendants shall make all such payments to the United States by electronic funds transfers pursuant to written instructions provided by the United States. The entire balance of the Settlement Amount or any portion thereof may be prepaid at any time without penalty. Of the Settlement Amount, \$1,018,000 is restitution to the United States.

2. Conditioned upon the United States receiving each payment on the Settlement Payment Schedule and as soon as feasible after receipt of each payment, the United States shall pay 28% of each payment to Relator by electronic funds transfer (“Relator’s Share”).

3. Subject to the exceptions in Paragraph 6 (concerning reserved claims), Paragraph 8 (concerning disclosure of assets), Paragraph 16 (concerning default), and Paragraph 17 (concerning bankruptcy) below, and upon the United States’ receipt of the full 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. §§ 3729-33, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-12, or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraphs 6, 8, 16, and 17 below, and upon the United States’ receipt of the full Settlement Amount, plus interest due under Paragraph 1, and upon Relator’s receipt of \$23,194 from Defendants towards Relator’s claim for reasonable expenses, attorneys’ fees, and costs pursuant to 31 U.S.C. § 3730(d), Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases the Defendants from any civil monetary claim Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33, and from Relator’s claims for reasonable attorneys’ fees, expenses, and costs pursuant to 31 U.S.C. § 3730(d)(1). The Defendants’ settlement payment of \$23,194 for Relator’s expenses, attorneys’ fees and costs shall be paid within ten (10) calendar days of the execution of this agreement by all Parties.

5. In consideration of the obligations of Defendants in this Agreement and the Integrity Agreement (IA), entered into between OIG-HHS and Benzer Pharmacy, LLC, 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 Benzer Pharmacy, LLC 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 6 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the Defendants 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 6, below.

6. Notwithstanding the releases given in Paragraphs 3, 4, and 5 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 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;

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

7. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but 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). Conditioned upon Relator's receipt of the Relator's Share, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. 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 have 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 \$100,000 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 January 10, 2018.

9. Defendants waive and shall not assert any defenses Defendants 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.

10. Defendants fully and finally release the United States, its agencies, officers, agents, employees, and servants from any claims (including for 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.

11. Defendants fully and finally release the Relator from any claims (including for 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 Relator related to the Civil Action and the Relator's investigation and prosecution thereof.

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

13. 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and any related criminal resolution;
- (2) the United States' audit(s) and civil and criminal 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 and criminal

investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);

- (4) the negotiation and performance of this Agreement and any related criminal resolution;
- (5) the payment Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relator, including costs and attorneys' fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the IA to: (i) retain an independent review organization to perform annual reviews as described in Section III of the IA; 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").

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.

14. 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 15 (waiver for beneficiaries paragraph), below.

15. 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.

16. 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 8.

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 Defendants' 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 the Defendants, c/o Alpesh Patel, or to such other representative as Defendants 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 agree that 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, 4, and 5 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 January 10, 2018. Defendants agree 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 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 the Defendants, c/o Alpesh Patel. 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.

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

a. Defendants have reviewed their financial situation and warrant that they are 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, subject to the provisions of Recitals A-C.

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 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.

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 Defendants were 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 Defendants' 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, any Defendant 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 any Defendant's debts, or to adjudicate any Defendant as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for any Defendant or for all or any substantial part of any Defendant's 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 Paragraphs 3, 4, and 5 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Defendants in the amount of \$16,200,000, less any payments received pursuant to this agreement; provided, however, that such payments are not otherwise avoided and recovered from the United States by any Defendant, a receiver, trustee, custodian, or other similar official for any Defendant;

(iii) if any payments are avoided and recovered by any Defendant, a receiver, trustee, custodian, or similar official for any Defendant, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return any portions of such payments already paid by the United States to Relator pursuant to Paragraph 2; and

(iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relator pursuant to Paragraph 2 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, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States.

f. Defendants agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 16.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 such defenses were available on January 10, 2018.

18. Upon receipt of the initial settlement payment described in Paragraph 1, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action as to the Defendants pursuant to Rule 41(a)(1)(ii). The dismissal shall be with prejudice to the United States and the Relator as to the Covered Conduct, and with prejudice to the Relator and without prejudice to the United States as to all other claims against the Defendants except as provided herein. Provided, however, that the United States and Relator

may request that the Court reopen the Civil Action in the event Defendants fail to pay any portion of the Settlement Amount as provided herein.

19. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, with the exception of the Relator's right to attorneys' fees, expenses, and costs pursuant to 31 U.S.C. § 3730(d), to be satisfied as set forth in Paragraph 4 above.

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

21. 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 District of Massachusetts. 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.

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

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

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

25. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

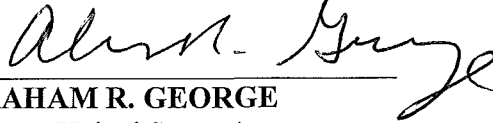
26. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

28. 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: 5/7/24

BY: 
ABRAHAM R. GEORGE
Assistant United States Attorney
United States Attorney's Office
District of Massachusetts

DATED: _____

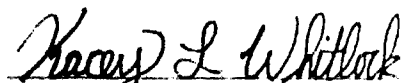
BY: **SUSAN GILLIN**
SUSAN E. GILLIN
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

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SUSAN GILLIN
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DEFENDANTS

DATED: 5/3/24

BY:



Kacey Whitlock, Corporate Representative
on behalf of Benzer Pharmacy Holding, LLC, Berkley
Pharmacy, LLC, and RX Care Four, LLC



DATED: May 3, 2024

BY:

DAVID G. LAZARUS
Verrill Dana LLP
Counsel for Defendants

RELATOR

DATED: 5/03/24

BY: 
REBECCA SOCOL

DATED: 5-3-24

BY: Robert N. Nicholson
ROBERT N. NICHOLSON
Counsel for the Relator