

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Attorney’s Office for the Northern District of New York and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (collectively, the “United States”), the State of New York (the “State”) acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“MFCU”), Nassau Pharmacy, Inc. (“Nassau Pharmacy”), Cathy Grossman (“Grossman”), and relator Barbara Lopez (“Relator”) (hereinafter, all of the above are collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Grossman is a pharmacist licensed in the State of New York who, at all times relevant to this Agreement, owned and operated Nassau Pharmacy.

B. Nassau Pharmacy dispensed prescription medications to patients, including patients who have health insurance provided by the Medicare Program and the New York State Medicaid Program.

C. On November 8, 2016, Relator filed a *qui tam* action in the United States District Court for the Northern District of New York captioned *United States of America ex rel. Barbara Lopez v. Nassau Pharmacy, Inc.*, No. 1:16-cv-1338, pursuant to the *qui tam* provisions of the federal False Claims Act, 31 U.S.C. § 3730(b) and the New York False Claims Act, N.Y. State Fin. Law § 190(2) (the “Civil Action”). Relator alleged that Nassau Pharmacy and Grossman engaged in a variety of deceptive billing practices designed to defraud the Medicare and Medicaid Programs. The United States and the State intervened in the Civil Action on May 31, 2019.

D. Grossman submitted or caused Nassau Pharmacy to submit claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”) and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

E. The United States and the State contend that they have certain civil claims against Grossman and Nassau Pharmacy arising from Grossman and Nassau Pharmacy engaging in the following conduct, which the Parties agree took place from March 3, 2010 through March 27, 2017 (hereinafter, the “Covered Conduct”): Grossman and Nassau Pharmacy submitted false claims for payment to Medicare and Medicaid for prescription drugs that Grossman and her staff at Nassau Pharmacy never dispensed. In some instances, Grossman and Nassau Pharmacy billed Medicare and Medicaid for drugs that Grossman’s patients never ordered or never picked up from the pharmacy. In other instances, Grossman and Nassau Pharmacy billed Medicare and Medicaid for brand name drugs but dispensed less expensive generic alternatives. During this period, Grossman and Nassau Pharmacy billed Medicare and Medicaid for allegedly dispensing more drugs than Nassau Pharmacy had in stock or had ordered from its distributors.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) and N.Y. State Fin. Law §§ 190(6) and (7) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

Grossman and Nassau Pharmacy wish to resolve their liability for the Covered Conduct, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Grossman, on behalf of herself and Nassau Pharmacy, shall pay to the United

States and the State a total of One Hundred Thousand dollars and Zero cents (\$100,000.00) (referred to herein as the “Total Settlement Amount”), of which Forty Nine Thousand Dollars and Zero cents (\$49,000.00) is restitution, no later than July 1, 2019.

a. Of the Total Settlement Amount, Grossman shall pay to the United States Fifty Six Thousand Two Hundred Seven dollars and Zero cents (\$56,297.00) (“Federal Settlement Amount”) pursuant to written instructions to be provided by the United States Attorney’s Office for the Northern District of New York.

b. Of the Total Settlement Amount, Grossman shall pay to the State Forty Three Thousand Seven Hundred Three dollars and Zero cents (\$43,703.00) (“State Settlement Amount”) pursuant to written instructions to be provided by MFCU.

2. Conditioned upon the United States receiving the Federal Settlement Amount from Grossman and as soon as feasible after receipt, the United States shall pay \$12,385.34 to Relator by electronic funds transfer.

3. Conditioned upon the State receiving the State Settlement Amount from Grossman and as soon as feasible after receipt, the State shall pay \$9,614.88 to Relator by electronic funds transfer.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Grossman’s full payment of the Federal Settlement Amount, the United States releases Grossman and Nassau Pharmacy 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.

5. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Grossman's full payment of the State Settlement Amount, the State agrees to release Grossman and Nassau Pharmacy from any civil monetary claim the State has for the Covered Conduct under the New York False Claims Act, N.Y. State Fin. Law §§ 189 et seq.; Social Services Law § 145-b, or any other state law, or common law or equity, including equitable theories of payment by mistake, unjust enrichment, and fraud.

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) or the New York Tax Law;
- 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 and the Medicaid program;
- d. Any liability to the United States (or its agencies), or to the State (or its agencies), for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Except as explicitly stated in this Agreement, 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) and N.Y. State Fin. Law § 190(5)(b)(ii). Conditioned upon Relator's receipt of the payments described in Paragraphs 2 and 3, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States and the State, and their respective agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730 or N.Y. State Fin. Law § 190, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Conditioned upon Grossman's full payment of the Total Settlement Amount in accordance with Paragraph 1, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Grossman and Nassau Pharmacy from any civil monetary claim the Relator has or may have for herself or on behalf of the United States or the State for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 or the New York False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*; provided, however, that nothing in this Agreement shall preclude Relator and her counsel from seeking to recover her expenses, costs or attorneys' fees from Defendants pursuant to 31 U.S.C. § 3730(d).

9. Grossman and Nassau Pharmacy waive and shall not assert any defenses that Grossman or Nassau Pharmacy 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. Grossman and Nassau Pharmacy fully and finally release the United States, the State, or their respective agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Grossman and Nassau Pharmacy have asserted, could have asserted, or may assert in the future against the United States, the State, or their respective agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' and the States' investigation and prosecution thereof.

11. Grossman and Nassau Pharmacy fully and finally release the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Grossman and Nassau Pharmacy have asserted, could have asserted, or may assert in the future against the Relator, related to the filing of 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 Grossman and Nassau Pharmacy 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. Grossman and Nassau Pharmacy 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Nassau Pharmacy, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and the State's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Nassau Pharmacy's investigation, defense, and corrective actions undertaken in response to the United States' and State's audit(s) and civil and any criminal 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 payment Grossman makes to the United States and State pursuant to this Agreement and any payments that Grossman and/or Nassau Pharmacy may make to Relator, including costs and attorneys' fees; and

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 Nassau Pharmacy, and Nassau Pharmacy 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 Nassau 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:

Nassau Pharmacy 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 Nassau 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. Nassau Pharmacy agrees that the United States, at a minimum, shall be entitled to recoup from Nassau Pharmacy 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 Nassau Pharmacy or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Nassau Pharmacy or any of its 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 Nassau Pharmacy's 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 16 (waiver for beneficiaries paragraph), below.

15. Grossman and Nassau Pharmacy 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. Upon receipt of the payment described in Paragraph 1 above, the Parties shall promptly sign and file a Joint Partial Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). The Joint Partial Stipulation of Dismissal shall be (i) with prejudice as to the United States and the State for the Covered Conduct, (ii) with prejudice as to the Relator for his claims for or related to the Covered Conduct, and (iii) with prejudice as to the Relator for all claims that the Relator has asserted, could have asserted, or may assert in the future for matters referenced or raised in the Civil Action on behalf of the United States and the State. All of Relator's potential personal claims, including but not limited to Relator's retaliation claims pursuant to 31 U.S.C. § 3730(h), along with her and her counsel's right to recover his expenses, costs or attorneys' fees from Grossman and Nassau Pharmacy pursuant to 31 U.S.C. § 3730(d), will be excluded from the Joint Partial Stipulation of Dismissal.

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

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

19. 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 Northern District of New York. 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.

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

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

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

23. This Agreement is binding on Grossman's and Nassau Pharmacy's successors, transferees, heirs, and assigns.

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


25. All parties consent to the United States' and the State's disclosure of this Agreement, and information about this Agreement, to the public.

26. 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.

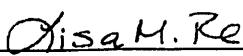
THE UNITED STATES OF AMERICA

GRANT C. JAQUITH
United States Attorney

DATED: 5/20/2019

By: 
ADAM J. KATZ
Assistant United States Attorney

DATED: 5/28/2019

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

THE STATE OF NEW YORK

LETITIA JAMES
Attorney General of the State of New York

DATED: _____

BY: _____
JILL D. BRENNER
Special Assistant Attorney General


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THE UNITED STATES OF AMERICA

GRANT C. JAQUITH
United States Attorney

DATED: 5/20/2019

By:


ADAM J. KATZ
Assistant United States Attorney

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

THE STATE OF NEW YORK

LETITIA JAMES
Attorney General of the State of New York

DATED: 5/23/19

BY:


JILL D. BRENNER
Special Assistant Attorney General

**DEFENDANTS CATHY GROSSMAN
AND NASSAU PHARMACY, INC.**

DATED: 5/20/19 BY: Cathy Grossman
CATHY GROSSMAN

DATED: 5/19/19 DEROHANNESIAN & DEROHANNESIAN

BY: Paul DeroHannesian
PAUL DEROHANNESIAN, Esq.

RELATOR BARBARA LOPEZ

DATED: _____ BY: _____
BARBARA LOPEZ

O'CONNELL AND ARANOWITZ

DATED: _____ BY: _____
DAVID R. ROSS, Esq.


**DEFENDANTS CATHY GROSSMAN
AND NASSAU PHARMACY, INC.**

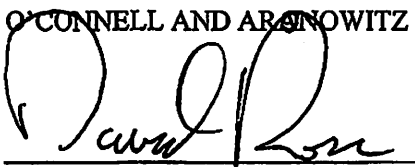
DATED: _____ BY: _____
CATHY GROSSMAN

DATED: _____ DEROHANNESIAN & DEROHANNESIAN

BY: _____
PAUL DEROHANNESIAN, Esq.

RELATOR BARBARA LOPEZ

DATED: 5/20/19 BY: 
BARBARA LOPEZ

DATED: 5/20/19 BY: 
O'CONNELL AND ARONOWITZ
DAVID R. ROSS, Esq.