

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA *et al. ex rel.*
MARC D. BAKER,

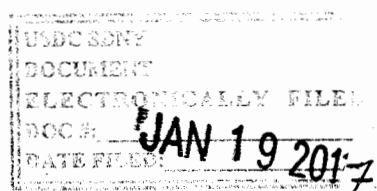
Plaintiffs,

v.

WALGREENS, INC.,

Defendant.

12 Civ. 0300 (JPO)



UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

WALGREEN CO.,

Defendant.

12 Civ. 0300 (JPO)

STIPULATION AND ORDER OF SETTLEMENT AND RELEASE

WHEREAS, this Stipulation and Order of Settlement and Release (“Relator Settlement Stipulation”) is entered into by and among plaintiff the United States of America (“United States” or “Government”), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York; and the *qui tam* relator in the above-captioned action (“Relator” and together with the United States, “Parties”), by his authorized representatives;

WHEREAS, on or about January 13, 2012, Relator filed a *qui tam* complaint against Walgreens, Inc. a/k/a Walgreen Co. (“Walgreens”) in the United States District Court for the Southern District of New York (“Court”), alleging, *inter alia*, that Walgreens had violated the federal Anti-Kickback Statute (“AKS”), 42 U.S.C. § 1320a-7b, and federal the False Claims Act

("FCA"), 31 U.S.C. §§ 3729 *et seq.*, in connection with its enrollment of persons receiving benefits from federally-funded healthcare programs in its Prescription Savings Club program ("PSC program") ("Relator Original Complaint"). Relator filed an amended complaint on December 30, 2013 ("Relator Amended Complaint" and together with the Relator Original Complaint, "Relator Action");

WHEREAS, the United States has filed a Notice of Partial Intervention and a Complaint-In-Intervention ("Government Complaint") in the Relator Action;

WHEREAS, the United States and Walgreens have entered into a Stipulation and Order of Settlement and Dismissal (the "Settlement Agreement"), agreeing to resolve allegations that from January 1, 2007 through December 31, 2010, Walgreens knowingly solicited and allowed persons receiving benefits from the Medicare Part D, Medicaid, and TRICARE programs to enroll in its PSC program, in order to induce such persons to self-refer their prescriptions to Walgreens' pharmacies, in violation of the AKS and the FCA. The conduct described in this paragraph is the "Government Complaint Conduct" for purposes of this Relator Settlement Stipulation;

WHEREAS, during the course of discussing a potential resolution of the Government Complaint Conduct, Walgreens disclosed to the Government information reflecting that during the period January 1, 2011 through December 31, 2015, it had also enrolled government beneficiaries in the PSC program, and it sought to negotiate a resolution of any potential claims the Government may have for allegations that from January 1, 2011 through December 31, 2015, it had knowingly enrolled government beneficiaries in the PSC program in order to induce such persons to self-refer their prescriptions to Walgreens' pharmacies in violation of the AKS and FCA ("Post-2010 Conduct") together with the Government Complaint Conduct. In addition to

resolving allegations for the Government Compliant Conduct, the Settlement Agreement also resolved allegations for the Post-2010 Conduct. The Post-2010 Conduct together with the Government Complaint Conduct is the "Covered Conduct" for purposes of this Relator Settlement Stipulation;

WHEREAS, pursuant to the Settlement Agreement, Walgreens has agreed to pay the United States a settlement of \$46,205,108.53 ("Settlement Amount");

WHEREAS, the Relator has asserted that, pursuant to 31 U.S.C. § 3730(d)(1), Relator is entitled to receive a portion of the Settlement Amount ("Relator's Claim"); and

WHEREAS, the Parties hereto mutually desire to reach a full, complete, and final settlement of the Relator's Claim against the United States for a portion of the Settlement Amount pursuant to the terms set forth below.

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Relator Settlement Stipulation, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Contingent upon receipt by the United States of the Settlement Amount, and within a reasonable time period thereafter, the United States will pay \$9,703,072.79 ("Relator's Share") to Relator by electronic funds transfer. The obligation to make this payment to Relator is expressly conditioned on, and arises only with, the receipt by the United States of the Settlement Amount as set forth in the Settlement Agreement. In the event that the United States does not receive the Settlement Amount as required by the Settlement Agreement, the United States shall have no obligation to make a payment to Relator.

2. Relator and his heirs, successors, attorneys, agents and assigns shall not object to the Settlement Agreement but agree and confirm that the Settlement Agreement is fair, adequate, and reasonable under all circumstances, and will not challenge the Settlement Agreement, including but not limited to the Settlement Amount, pursuant to 31 U.S.C. § 3730(c)(2)(B), and expressly waive the opportunity for a hearing on any such objection, pursuant to 31 U.S.C. § 3730(c)(2)(B).

3. Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents and assigns fully and finally release, waive, and forever discharge the United States and its agencies, officers, agents, employees and servants from any claims arising from the filing of the Relator's Action or under 31 U.S.C. § 3730, to the extent such claims relate to the Covered Conduct or allegations that Walgreens violated the AKS in connection with the PSC program, and from any claims to a share of the proceeds of the Settlement Agreement.

4. This Relator Settlement Stipulation does not resolve or in any manner affect any claims the United States has or may have against Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Relator Settlement Stipulation.

5. The United States and Relator agree that if the Settlement Agreement is held by a court not to be "fair, adequate, and reasonable," as required under 31 U.S.C. § 3730(c)(2)(B), this Relator Settlement Stipulation is null and void.

6. This Relator Settlement Stipulation, together with all of the obligations and terms hereof, shall inure to the benefit of and shall bind assigns, successors-in-interest, or transferees of the United States or Relator.

7. Each of the signatories to this Relator Settlement Stipulation represents that he or she has the full power and authority to enter into this Relator Settlement Stipulation.

8. This Relator Settlement Stipulation shall become final, binding, and effective only upon entry by the Court.

9. This Relator Settlement Stipulation constitutes the entire agreement of the United States and Relator with respect to the subject matter of this Relator Settlement Stipulation and may not be changed, altered, or modified except by a written agreement signed by the United States and Relator specifically referring to this Relator Settlement Stipulation.

10. This Relator Settlement Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Relator Settlement Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Relator Settlement Stipulation, this Relator Settlement Stipulation shall be deemed to have been drafted by all Parties to it and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

11. This Relator Settlement Stipulation may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

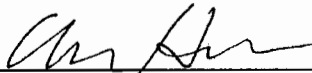
Agreed to by:

THE UNITED STATES OF AMERICA

Dated: New York, New York
January 18, 2017

PREET BHARARA
United States Attorney for the
Southern District of New York

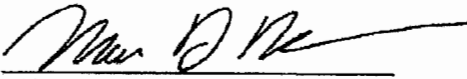
By:


CHRISTOPHER B. HARWOOD
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Attorney for the United States of America

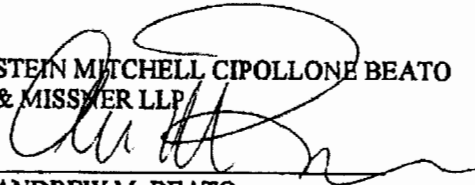
RELATOR

Dated: January 13, 2017

By: 
MARC D. BAKER


Relator

Dated: January 13, 2017

By: 
STEIN MITCHELL CIPOLLONE BEATO
& MISSNER LLP
ANDREW M. BEATO
JED WULFEKOTTE
MERYL GRENADIER
1100 Connecticut Ave, NW Suite 1100
Washington, DC 20036
Telephone: (202) 737-7777
Facsimile: (202) 296-8312

Attorneys for Relator

SO ORDERED:



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

UNITED STATES DISTRICT JUDGE

Dated: Jan. 18, 2017