

## 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) and the Drug Enforcement Administration (DEA), (collectively, the “United States”), Tara Pharmacy SE, LLC (“Tara Pharmacy”), and Alex Sproule and Nicholas Fuhrmann (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

1. Tara Pharmacy is a specialty pharmacy located in Homewood, Alabama, that provides pharmacy services for long-term care facilities located in Alabama, including in the Northern District of Alabama, and Georgia.

2. Tara Pharmacy operates pursuant to Certificates of Registration issued by the DEA authorizing it to dispense controlled substances in accordance with the Controlled Substances Act (CSA), 21 U.S.C. §§ 801 - 904, and its implementing regulations, 21 C.F.R. §§ 1306.01 - 1306.27.

3. On February 18, 2020, relators Alex Sproule and Nicholas Fuhrmann filed a *qui tam* action in the United States District Court for the Northern District of Alabama captioned *United States ex rel. Sproule, et al., v. Aurora Cares LLC d/b/a Tara Cares, et al.*, 2:20-CV-217-AMM, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Tara Pharmacy is named as a defendant in the Civil Action. The Civil Action alleges, *inter alia*, that Tara Pharmacy submitted false claims to the Medicare Program for controlled substances that lacked a valid prescription

4. The United States contends that Tara Pharmacy submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act,

42 U.S.C. §§ 1395-1395III (“Medicare”); and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

5. The United States contends that it has certain civil claims arising from the False Claims Act and certain civil penalty claims arising from the CSA against Tara Pharmacy. Specifically, the United States contends that Tara Pharmacy: (1) filled prescriptions for Schedule II controlled substances that did not meet the requirements of 21 C.F.R. § 1306.05, in violation of 21 C.F.R. § 1306.11(a), including prescriptions that lacked a valid, original physician signature; and (2) dispensed Schedule II controlled substances without complying with the requirements of 21 C.F.R. § 1306.11(d), including for “emergency” dispenses for which a written prescription was not received within the required 7-day period. The United States contends that the prescriptions at issue were written by the below doctors during the specified date ranges.

Doctors	Date Range of the Prescriptions
Dr. Harvey & Dr. Wright	January 1, 2018 to June 30, 2020
Dr. Frinks	January 1, 2016 to December 31, 2020
Dr. Fulcher	January 1, 2017 to December 31, 2020
Dr. Dawodu	January 1, 2016 to December 31, 2020
Dr. Desai	January 1, 2018 to December 31, 2019
Dr. Naeini	January 1, 2019 to December 31, 2020
Dr. Varughese	January 1, 2018 to December 31, 2019

This conduct is referred to below as the “Covered Conduct.”

6. This Settlement Agreement is neither an admission of liability by Tara Pharmacy nor a concession by the United States that its claims are not well founded.

7. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the False Claims Act proceeds of this Settlement Agreement and to Relators’ reasonable expenses, attorneys’ fees and costs.

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 AND CONDITIONS

1. Tara Pharmacy shall pay to the United States the following:
  - a) \$227,964.22 (“False Claims Act Settlement Amount), of which \$113,982.11 is restitution; and
  - b) \$395,000 (“CSA Settlement Amount”).

Tara Pharmacy shall make this total payment of \$622,964.22 (“Settlement Amount”) no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by United States Attorney’s Office for the Northern District of Alabama.

2. Conditioned upon the United States receiving the False Claims Act Settlement Amount and as soon as feasible after receipt, the United States shall pay \$52,431.77 to Relators by electronic funds transfer (Relators’ Share).

3. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States’ receipt of the False Claims Act Settlement Amount, the United States releases Tara 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.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States’ receipt of the CSA Settlement Amount, the United States releases Tara

Pharmacy from any civil penalty claims the United States has for the Covered Conduct under the CSA, 21 U.S.C. §§ 842(a)(1) and 842(c)(1)(A)-(B).

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Tara Pharmacy from any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in Paragraphs 3 and 4 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; or
- f. Any liability of individuals.

7. Relators and their 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 Relators' receipt of the Relators' Share, Relators and their 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. Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release Tara Pharmacy, and its officers, agents, members, managers, and employees, from any liability to Relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

9. Tara Pharmacy fully and finally releases Relators and their heirs, successors, attorneys, agents, and assigns, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Tara Pharmacy has asserted, could have asserted, or may assert in the future against Relators and their heirs, successors, attorneys, agents, and assigns, relating to, arising from, or otherwise concerning the Covered Conduct or the Civil Action, including Relators' investigation and prosecution thereof.

10. Tara Pharmacy waives and shall not assert any defenses Tara 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.

11. Tara Pharmacy fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Tara Pharmacy has 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.

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 Tara Pharmacy agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

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

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Tara Pharmacy's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and

- (5) the payment Tara Pharmacy makes to the United States pursuant to this Agreement and any payments that Tara Pharmacy may make to Relator, including costs and attorneys fees

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 Tara Pharmacy, and Tara 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 Tara 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: Tara 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 Tara 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. Tara Pharmacy agrees that the United States, at a minimum, shall be entitled to recoup from Tara 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 Tara Pharmacy or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Tara 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 Tara Pharmacy's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

14. Tara Pharmacy agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Tara Pharmacy shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Tara Pharmacy further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.



15. 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.

16. Tara Pharmacy agrees that it waives 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.

17. Upon receipt of the payments described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

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

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

20. 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 Alabama. 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.

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

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

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

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


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

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

27. 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.

**UNITED STATES OF AMERICA**

DATED: 7.11.2022

BY:   
\_\_\_\_\_  
Don B. Long III  
Assistant United States Attorney  
Northern District of Alabama

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

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**UNITED STATES OF AMERICA**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Don B. Long III  
Assistant United States Attorney  
Northern District of Alabama

DATED: 6/24/2022

BY: Lisa M. Re / RMP

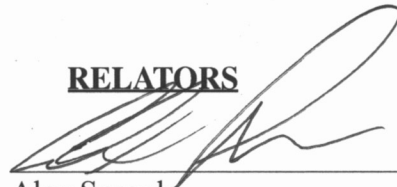
Lisa M. Re  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

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**RELATORS**

DATED: 7-6-22

BY:

  
\_\_\_\_\_  
Alex Sproule

DATED: \_\_\_\_\_

BY:

\_\_\_\_\_  
Nicholas Fuhrmann

DATED: \_\_\_\_\_

BY:

\_\_\_\_\_  
Colette G. Matzzie  
Phillips & Cohen LLP  
Counsel for Relators


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**RELATORS**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Alex Sproule

DATED: 07/06/2022

BY:   
\_\_\_\_\_  
Nicholas Fuhrmann

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Colette G. Matzzie  
Phillips & Cohen LLP  
Counsel for Relators

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**RELATORS**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Alex Sproule

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Nicholas Fuhrmann


DATED: 7/6/22

BY: Colette G. Matzkie  
Colette G. Matzkie  
Phillips & Cohen LLP  
Counsel for Relators


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**DEFENDANT**

DATED: 7-8-22

BY:   
James R. Cox, II  
Vice President  
On behalf of Tara Pharmacy SE, LLC

DATED: 7-5-2022

BY:   
Amanda B. Barbour  
Counsel for Tara Pharmacy SE, LLC

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