

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among: (i) 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); (ii) Walgreens Boots Alliance, Inc. and Walgreen Co. (collectively, the “Defendants” or “Walgreens”); and (iii) Andrew Bustos (the “Relator”) (the United States, Walgreens, and Relator are hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Walgreen Co. is an Illinois corporation with its principal place of business in Deerfield, Illinois, and is a wholly owned subsidiary of Walgreens Boots Alliance, Inc., a Delaware corporation with its principal executive offices in Deerfield, Illinois. Walgreen Co. directly and indirectly owns and operates retail pharmacies throughout the United States that provide pharmacy services to individuals, including beneficiaries of various federal health care programs.

B. On September 3, 2015, Andrew Bustos filed a sealed *qui tam* action in the United States District Court for the District of New Mexico captioned *United States ex rel. Bustos v. Walgreens Boots Alliance, Inc., et al.*, No. 1:15-cv-781, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

C. The United States contends that Walgreens submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”).

D. The United States contends that it has certain civil claims against Walgreens arising from Walgreens’s conduct of allegedly submitting or causing the submission of false

claims to the Medicare Part B Program for prescription medications, durable medical equipment, and related supplies that were never dispensed or delivered to beneficiaries during the period from January 1, 2009, through December 31, 2015. That conduct is referred to below as the “Covered Conduct.”

E. This Agreement is neither an admission of liability by Walgreens nor a concession by the United States that its claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement.

G. Relator also claims entitlement to recover from Walgreens reasonable expenses, attorneys’ fees, and costs, pursuant to 31 U.S.C. § 3730(d). Relator and Walgreens will resolve those claims separately from this Agreement through settlement.

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 Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. Walgreens shall pay to the United States the sum of Nine Million Dollars (\$9,000,000) (the “Settlement Amount”), of which \$4,659,590 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice. On or before September 3, 2024, Walgreens shall make an initial payment to the United States in the amount of Three Million Dollars (\$3,000,000), plus interest at a rate of 4.0% per annum from May 28, 2024, and shall thereafter pay the remaining Six Million Dollars (\$6,000,000), plus interest at a rate of 4.0% per annum from May 28, 2024, pursuant to the payment schedule attached at Exhibit A (the “Payments Over Time”). The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

2. Conditioned upon the United States receiving the Settlement Amount payments from Walgreens, as described in Paragraph 1 above, and as soon as feasible after receipt of each such payment, the United States shall pay the total sum of \$1,620,000 to counsel for Relator by electronic funds transfer as provided in the payment schedule set forth in Exhibit A (Relator's Share).

3. Subject to the exceptions in Paragraph 5 (concerning the United States' reserved claims) below, and subject to Paragraphs 14-15 (concerning default) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1 above, the United States releases Walgreens, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, 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 5 (concerning the United States' reserved claims) below, and subject to Paragraphs 14-15 (concerning default) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1 above, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Walgreens, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; officers, directors, managers, employees, shareholders, and agents; and the corporate successors and assigns of any of them, from any and all claims that Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. Notwithstanding the releases given in Paragraphs 3 through 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; and
- f. Any liability of individuals.

6. Relator and his 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 that the portion of the Settlement Amount allocated to the Covered Conduct claims involving the Medicare Part B Program (\$9,000,000) is also fair, adequate, and reasonable under all the circumstances. 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, 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.

7. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Walgreens, and its officers, agents, and employees, from any liability to Relator arising

from the filing of the Civil Action, or under 31 U.S.C. § 3730(d), for expenses or attorneys' fees and costs.

8. Walgreens waives and shall not assert any defenses Walgreens 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.

9. Walgreens 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 Walgreens 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.

10. 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) related to the Covered Conduct; and Walgreens agrees not to resubmit to any Medicare contractor 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.

11. Walgreens 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 Walgreens, 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) Walgreens'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 Walgreens makes to the United States pursuant to this Agreement and any payments that Walgreens may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes and under the Medicare Part B Program (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Walgreens, and Walgreens shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Walgreens or any of its subsidiaries or affiliates to the Medicare Program.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Walgreens further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare fiscal intermediaries, carriers, and/or contractors any

Unallowable Costs (as defined in this paragraph) included in payments previously sought from the United States, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Walgreens 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. Walgreens agrees that the United States, at a minimum, shall be entitled to recoup from Walgreens 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 Walgreens or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Walgreens 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 Walgreens's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

12. 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 13 (waiver for beneficiaries paragraph) below.

13. Walgreens 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.

14. In the event that Walgreens fails to pay the United States the Settlement Amount, as described in Paragraph 1 above and as provided in the payment schedule set forth in Exhibit A, Walgreens shall be in Default of Walgreens's payment obligations ("Default"). The United States will provide a written Notice of Default, and Walgreens 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 Agreement up to the date of payment. Notice of Default will be delivered to Walgreens, or to such other representative as Walgreens shall designate in advance in writing. If Walgreens fails 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 (consisting of the outstanding principal and the interest accrued at 4.0% as of the date of Default) 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).

15. In the event of Uncured Default, Walgreens agrees 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 Walgreens for the claims that would otherwise be covered by the releases provided in Paragraph 5 above, with any recovery reduced by the amount of any payments previously made by Walgreens 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 Walgreens 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, Walgreens agrees immediately to pay the United States the greater of (i) a 10-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, Walgreens waives and agrees 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 Walgreens within 120 days of written notification that this Agreement has been rescinded, and (ii) related to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement. Walgreens agrees 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.

16. Upon receipt of Walgreens's first payment described in Paragraph 1 above and identified in Exhibit A, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of the Civil Action pursuant to Rule 41(a)(1).

17. Except as provided in any agreements between Relator and Walgreens for attorneys' fees and costs, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Each party and signatory to this Agreement represents that it freely and voluntarily enters into 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 District of New Mexico. 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 counsel 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 Walgreens'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' 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

DATED: 08/30/24

BY:   
SETH W. GREENE  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 8/30/24

BY:   
RUTH F. KEEGAN  
Assistant United States Attorney  
District of New Mexico

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

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

**THE UNITED STATES OF AMERICA**

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

BY: \_\_\_\_\_  
SETH W. GREENE  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

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

BY: \_\_\_\_\_  
RUTH F. KEEGAN  
Assistant United States Attorney  
District of New Mexico

DATED: 08/26/24

BY: \_\_\_\_\_  
SUSAN GILLIN  
Digitally signed by SUSAN GILLIN  
Date: 2024.08.26 20:43:52 -04'00'  
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

**WALGREEN CO.**

DATED: August 28, 2024

BY: *Peter R. Wilson*

PETER R. WILSON  
Vice President  
Commercial/Government Litigation & Regulatory Law  
Walgreen Co.

DATED: August 28, 2024

BY: *Howard J. Young*

HOWARD J. YOUNG  
Morgan, Lewis & Bockius LLP  
Counsel for Walgreen Co.

RELATOR

DATED: 7/30/2024

BY: Andrew Bustos  
ANDREW BUSTOS

DATED: 8/8/24

BY: Maureen Sanders  
MAUREEN SANDERS  
Sanders & Westbrook, P.C.  
Counsel for Relator Andrew Bustos

**Exhibit A**

**PAYMENT SCHEDULE**

<b>Payment Date</b>	<b>Number of Days from 05/28/2024</b>	<b>Principal</b>	<b>Interest (4.0%)</b>	<b>Payment</b>	<b>Relator Share</b>
09/03/2024	98	\$3,000,000	\$32,219	\$3,032,219	\$540,000
12/02/2024	188	\$3,000,000	\$61,808	\$3,061,808	\$540,000
03/03/2025	279	\$3,000,000	\$91,726	\$3,091,726	\$540,000
<b>Total</b>		<b>\$9,000,000</b>	<b>\$185,753</b>	<b>\$9,185,753</b>	<b>\$1,620,000</b>