

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into by the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of Agriculture (USDA) (collectively the “United States”), and the State of Florida, Department of Children and Families (“DCF”), through their authorized representatives. The United States and the DCF are hereafter collectively referred to as the “Parties.”

II. RECITALS

As a preamble to this Agreement, the Parties agree to the following:

A. DCF is a state agency established by the State of Florida that is responsible for the development and provision of social services and the improvement of social conditions for the citizens of Florida. As part of its responsibilities, DCF administers public benefit programs.

B. The USDA administers the Supplemental Nutrition Assistance Program (SNAP), which provides financial assistance to eligible low-income individuals and families to purchase food in order to reduce hunger and improve nutrition. States, including Florida, oversee the distribution of SNAP benefits to eligible resident recipients and are also reimbursed by USDA for a portion of their SNAP administrative costs. States also may be entitled to receive administrative quality control performance bonuses from USDA for accuracy in administering the program. In Florida, DCF is the agency responsible for overseeing and administering the SNAP program.

C. The United States contends that it has certain civil claims against DCF arising from the USDA’s payment of SNAP accuracy performance bonuses and reimbursement of

SNAP administrative quality control costs for the time period between October 1, 2010 and September 30, 2015, based on the following alleged conduct:

- i. Implementing recommendations from consultants known as the Rushmore Group and Julie Osnes (the “Consultants”) relating to SNAP quality control practices and procedures, that violated USDA requirements, including USDA Food and Nutrition Service (FNS) Handbook 310, and injected bias into and undermined the integrity of DCF’s SNAP quality control process;
- ii. Submitting SNAP quality control data and information to the USDA material to the USDA’s payment of quality control performance bonuses to DCF for fiscal years 2011 through 2014; and
- iii. Claiming reimbursement for quality control administrative expenses for DCF activities that were performed in violation of applicable USDA requirements, including FNS Handbook 310.

The conduct described in this paragraph shall be referred to as the “Covered Conduct.”

D. The Parties agree that nothing in this Agreement is an admission of liability by DCF, nor a concession by the United States that its claims are not well-founded. DCF denies the United States’ allegations in paragraph C.

E. The fiscal year 2015 bonus for \$3,854,010 for best case and procedural error rate, which the United States has confirmed it has paid to DCF, is not part of the Covered Conduct.

F. 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:

III. TERMS AND CONDITIONS

1. No later than ten business days after DCF receives a copy of the Agreement signed by the United States, DCF shall pay to the United States \$17,500,000 (hereafter referred to as the "Settlement Amount"), of which \$17,230,331 is restitution, by electronic funds transfer, pursuant to written instructions to be provided by the United States Department of Justice.

2. DCF also releases any and all claims it has or may have to payment by the United States of the 2013 SNAP quality control performance bonus in the amount of \$7,015,422 and the 2014 SNAP quality control performance bonus in the amount of \$7,742,209 awarded to DCF but never paid by USDA.

3. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, in consideration of the obligations of DCF set forth in this Agreement, and conditioned upon the United States' receipt of the Settlement Amount as described in Paragraph 1, the United States releases the State of Florida, DCF 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of breach of contract, payment by mistake, unjust enrichment, disgorgement, negligence, and fraud; and statutory or common-law theories of setoff, offset, withholding, or contract debt; or any other civil or administrative monetary claim that the United States Department of Justice, Civil Division, and/or the Civil Division of the United States Attorney's Office for the Eastern District of Washington have authority to assert and compromise under 28 C.F.R. Part 0, Subpart I, §0.45(d).

4. Notwithstanding the release given in paragraph 3 of this Agreement, or any other

term of this Agreement, the following claims 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 the suspension and debarment rights of any federal agency;
- 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.

5. DCF fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that DCF 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 and the United States' investigation and prosecution thereof.

6. DCF waives and shall not assert any defenses DCF 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.

7. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of DCF, 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' audits and civil investigations of the matters covered by this Agreement;

(3) DCF's investigation, defense, and corrective actions undertaken in response to the United States' audits and civil investigations in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement;

(5) the payment DCF makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes ("Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by DCF, and DCF shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.


c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, DCF shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by DCF or any of its offices, divisions, agencies or departments from the United States. DCF agrees that the United States, at a minimum, shall be entitled to recoup from DCF any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine DCF's books and records and to disagree with any calculations submitted by DCF or any of its offices, divisions, agencies or departments regarding any Unallowable Costs included in payments previously sought by DCF, or the effect of any such

Unallowable Costs on the amount of such payments.


8. This Agreement is intended to be for the benefit of the Parties only.
9. All Parties represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
10. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
11. 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 Eastern District of Washington. 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.
12. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.
13. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below and herein.
14. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which constitute one and the same Agreement.
15. This Agreement is binding on DCF's successors, transferees, and assigns.
16. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
17. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES OF AMERICA

DATED: 7/12/2021


BY: 
Dan Fruchter
Tyler H.L. Tornabene
Assistant United States Attorneys
Eastern District of Washington
United States Department of Justice

DATED: 7/12/2021

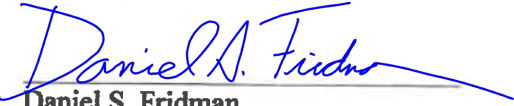

Don Williamson
Senior Trial Counsel
Fraud Section
Commercial Litigation Branch
U.S. Department of Justice

FOR THE STATE OF FLORIDA, DEPARTMENT OF CHILDREN AND FAMILIES

DATED: 7/12/2021

BY: 
Secretary Shevaun L. Harris
Florida Department of Children and Families

DATED: July 12, 2021

BY: 
Daniel S. Fridman
Fridman Fels & Soto, PLLC
Counsel for the State of Florida, Department
of Children and Families