

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

----- X  
UNITED STATES OF AMERICA *ex rel.*  
PAMELA BRUMFIELD *et al.*,  
:

Plaintiffs, : 12 Civ. 3674 (JGK)

v. :

**CONSENT ORDER**

NARCO FREEDOM, INC. and ALAN BRAND,  
:

Defendants.  
:

----- X  
UNITED STATES OF AMERICA,  
:

Plaintiff-Intervenor,  
:

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
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v. :

DATE FILED: 7-13-17

NARCO FREEDOM, INC., ALAN BRAND,  
GERALD BETHEA, JOINING HANDS  
MANAGEMENT INCORPORATED, BERNARD  
RORIE and DEVORAH HAIGLER,  
:

Defendants.  
:

X  
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WHEREAS, this Stipulation and Order of Settlement and Dismissal (the “Stipulation”), is entered into by and among plaintiff the United States of America (the “United States” or the “Government”), by its attorney Joon H. Kim, United States Attorney for the Southern District of New York, Alan Nisselson (the “Trustee”), in his capacity as the Chapter 7 Bankruptcy Trustee of Narco Freedom, Inc. (“Narco Freedom”) and relators Pamela Brumfield, Guy Flanders, Quiana Ware, Javona Delvalle, Keisha Weston, Rise Grady, and Lisa Reinholt (collectively, “Relators”), through their authorized representative;

WHEREAS, the Trustee is acting solely in his capacity as the Chapter 7 Bankruptcy Trustee of Narco Freedom for all purposes in connection with this Stipulation;

WHEREAS, Narco Freedom is a New York not-for-profit corporation that formerly maintained its principal place of business in the Bronx, New York;

WHEREAS, until September 2015, Narco Freedom was engaged in the business of operating outpatient drug rehabilitation programs, including providing services reimbursed by Medicaid;

WHEREAS, on or about May 8, 2012, relators Pamela Brumfield, Guy Flanders, Quiana Ware, Javona Delvalle, Keisha Weston, and Rise Grady filed a complaint in the above-referenced action against Narco Freedom and its former Chief Executive Officer, Alan Brand, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), on behalf of the United States;

WHEREAS, on March 10, 2016, the United States intervened in the action and on May 5, 2016, filed a complaint-in-intervention (“United States Complaint”) against Narco Freedom, its former CEO, and others, alleging, as against Narco Freedom, that it violated the False Claims Act (the “FCA”), 31 U.S.C. § 3729 et seq., and the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, by engaging in three separate schemes: 1) between 2002 and 2014, Narco Freedom offered short-term residence in three-quarter houses operated by Narco Freedom, as an inducement to Medicaid recipients to enroll in and attend outpatient treatment in Narco Freedom’s programs, for which Narco Freedom billed Medicaid; 2) between 2008 and 2011, Narco Freedom paid kickbacks to third-party operators of three-quarter houses for requiring the residents of their houses to attend Narco Freedom outpatient programs; and 3) between 2009 and 2011, Narco Freedom caused false and fraudulent claims for reimbursement from Medicaid to be submitted for outpatient counseling services that it claimed to have rendered (collectively, the “Covered Conduct”);

WHEREAS, on June 1, 2016, the above-referenced relators plus one additional

relator, Lisa Reinholt, filed an amended complaint asserting additional claims against Narco Freedom (“Relators’ Complaint”);

WHEREAS, previously, in October 2014, the United States had commenced a civil action against Narco Freedom with this Court seeking injunctive relief, and the Court had appointed a “Temporary Receiver” for Narco Freedom;

WHEREAS, on January 19, 2016, the Temporary Receiver filed on behalf of Narco Freedom a petition for bankruptcy under Chapter 7 of the Bankruptcy Code, in the matter of *In re Narco Freedom, Inc.*, 16-10123 (S.D.N.Y.) (the “Bankruptcy”), and Alan Nisselson, Esq., was appointed as Chapter 7 Trustee for Narco Freedom;

WHEREAS, on July 18, 2016, the United States filed a general unsecured claim in the Bankruptcy, Docket No. 146-1 (the “United States Claim”), asserting its damages and penalties under the FCA arising from the Covered Conduct;

WHEREAS, the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“New York”), also filed a general unsecured claim in the Bankruptcy, Docket No. 138-2 (the “New York Claim”), at around the same time asserting its damages, pursuant to state and common law, for some of the same Covered Conduct and other alleged unlawful acts by Narco Freedom;

WHEREAS, the United States, the Trustee and Relators (collectively, the “Parties”), have reached a full and final, mutually agreeable resolution of the claims arising out of the Covered Conduct;

WHEREAS, in the Bankruptcy, the Trustee, the United States, and New York have reached a resolution of both the United States Claim and the New York Claim (together, the “Combined Government Claim”); and

WHEREAS, the terms of this stipulation have been previously reviewed and

approved by the bankruptcy court ("Bankruptcy Court") in the context of the resolution of the Combined Government Claim;

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Trustee, on behalf of Narco Freedom, consents to this Court's exercise of personal jurisdiction over Narco Freedom.

2. The United States, New York, and the Trustee, on behalf of Narco Freedom, previously executed a separate settlement agreement resolving the Combined Government Claim (the "Bankruptcy Settlement"), which has been approved by and entered in the Bankruptcy Court and is attached hereto as Exhibit A. Pursuant to the terms of the Bankruptcy Settlement, the Trustee and the United States agreed that the United States' portion of the Combined Government Claim shall be allowed in the following amounts: (a) \$50,509,440 as a non-priority general unsecured claim (the "U.S. Portion of the Allowed General Unsecured Claim"), to be paid pro rata under 11 U.S.C. § 726(a)(2) with all other allowed non-priority general unsecured claims when the Trustee makes distributions to such creditors; and (b) \$200,230,446 as a subordinated claim (the "U.S. Portion of the Allowed Subordinated Claim"), to be paid pro rata under 11 U.S.C. § 726(a)(4) with all other allowed subordinated claims to the extent money is available to distribute on such claims in accordance with the distribution provisions of 11 U.S.C. § 726. The combined total of the U.S. Portion of the Allowed General Unsecured Claim and the U.S. Portion of the Allowed Subordinated Claim shall be referred to herein as the "U.S. Settlement Amount."

3. The Trustee shall work in good faith to expeditiously secure the dissolution of Narco Freedom.

4. The Trustee, on behalf of Narco Freedom, admits, acknowledges, and accepts Narco Freedom's responsibility for the following facts based on the acts and omissions of certain

of Narco Freedom's former directors, officers and employees:

- a. Between 2006 and 2014, Narco Freedom operated short-term residences known as "Freedom Houses." As a condition of residence at the Freedom Houses, Narco Freedom required residents to enroll in and attend a Narco Freedom outpatient program.
- b. One purpose of the Freedom Houses was to induce Medicaid recipients to use Narco Freedom's outpatient programs by providing those individuals with subsidized housing.
- c. Between 2008 and 2011, Narco Freedom made monthly payments to operators of three-quarter houses pursuant to purported "lease agreements" executed by Narco Freedom, but these payments were not actually part of a legitimate lease arrangement, and instead were paid to incentivize the operators to require the residents of their houses to attend Narco Freedom outpatient programs.
- d. In 2010, Narco Freedom directed and paid counselors employed in its outpatient treatment programs in Red Hook, Brooklyn, to perform "corrective action and maintenance" on patient records, which included creating records reflecting that counselors had treated certain patients that the counselors had not in fact treated; claims based upon these false records were submitted to and paid by Medicaid.

5. As detailed below, the Trustee agrees to cooperate fully with the United States' investigation relating to the Covered Conduct, including of individuals and entities not released in this Stipulation. Specifically, the Trustee, at the expense of the Chapter 7 bankruptcy estate of Narco Freedom (the "Estate"), shall cause to be maintained all of Narco Freedom's currently existing paper and electronic documents relating to the Covered Conduct for a period of three years from the Effective Date (the "Records Retention Period"). During the Records Retention Period, the Trustee also shall provide complete access to all non-privileged documents and information requested by the United States relating to the Covered Conduct and the allegations in

the United States' operative complaint. Further, the Trustee, on Narco Freedom's behalf, agrees to furnish to the United States, upon request, complete and un-redacted copies of all non-privileged documents, reports, memoranda of interviews, or records in his possession, custody, or control concerning any investigation of the Covered Conduct that he or Narco Freedom has undertaken, or that has been performed by another on his or Narco Freedom's behalf.

Additionally, the Trustee agrees not to impair the cooperation of Narco Freedom's current and former directors, officers, and employees, for interviews and testimony, consistent with the rights and privileges of such individuals. At the conclusion of the Records Retention Period, the Trustee or his successor also shall contact the Government pursuant to the procedure set forth in Paragraph 23 below at least sixty calendar days prior to discarding any records covered by this Paragraph and shall give the Government an opportunity to take custody of such records.

6. Effective upon the Effective Date of this Stipulation, Narco Freedom is hereby excluded from participation in Medicare, Medicaid, and all Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f), for a period of 50 years, based on the May 31, 2017 guilty plea entered by the Trustee on behalf of Narco Freedom to one count of Enterprise Corruption, in violation of Penal Law §460.20(1)(a), including three separate pattern acts of Grand Larceny in the First Degree, in violation of Penal Law §155.42, and two counts of Offering a False Instrument for Filing in the First Degree, in violation of Penal Law §175.35, in the Supreme Court of the City of New York, County of the Bronx. This exclusion is authorized under 42 U.S.C. § 1320a-7(a)(1) and 42 U.S.C. § 1320a-7(b)(7). Such exclusion shall have national effect. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by Narco Freedom in any capacity while Narco Freedom is excluded. This payment prohibition applies to Narco Freedom and all other individuals and entities (including, for example, anyone who employs or

contracts with Narco Freedom, and any hospital or other provider where Narco Freedom provides services). The exclusion applies regardless of who submits the claim or other request for payment. Violation of the conditions of the exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. The Estate agrees to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion; however, any such hold harmless claim against the Estate, if allowed, shall only be allowed as a subordinated claim and be paid pro rata under 11 U.S.C. § 726(a)(4) with all other allowed subordinated claims to the extent money is available to distribute on such claims in accordance with the distribution provisions of 11 U.S.C. § 726. For avoidance of doubt, the United States' sole hold harmless remedy shall be in the form of an amended subordinated claim against the Estate. The Trustee waives any further notice of the exclusion and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If Narco Freedom wishes to be reinstated, Narco Freedom must submit a written request for reinstatement to the OIG in accordance with the provisions of 42 C.F.R. §§ 1001.3001-3005. Such request may be made to the OIG no earlier than 120 days prior to the expiration of the 50-year period of exclusion. Reinstatement becomes effective upon application by Narco Freedom, approval of the application by the OIG, and notice of reinstatement by the OIG. Obtaining another license, moving to another state, or obtaining a provider number from a Medicare contractor, a state agency, or a Federal health care program does not reinstate Narco Freedom's eligibility to participate in these programs.

7. In consideration of the Trustee's execution of this Stipulation and the Trustee's release as set forth in Paragraph 8 below, Relators, for themselves and for their heirs, successors,

attorneys, agents, and assigns, agree not to file a bankruptcy claim in the Bankruptcy, and further agree to release Narco Freedom, the Trustee, to the extent he was acting on behalf of Narco Freedom, and the Trustee's attorneys and agents, to the extent they were acting on behalf of the Trustee in connection with the Bankruptcy, the Relators' Complaint or the United States Complaint (collectively and together with the Trustee, the "Trustee Releasees"): (a) from any claims Relators have asserted, or could have asserted, or may assert in the future for any acts or omissions that predated this Stipulation; (b) from any claims that Relators have or could have asserted on behalf of the United States for the conduct alleged in the Relators' Complaint or the United States Complaint under the FCA, 31 U.S.C. § 3729, *et seq.*; and (c) from any claims to recover their expenses, costs or attorney's fees from Narco Freedom, pursuant to 31 U.S.C. § 3730(d).

8. In consideration of Relators' execution of this Stipulation and Relators' releases as set forth in Paragraph 7 above, Narco Freedom, and the Trustee Releasees, on behalf of Narco Freedom, release Relators and their heirs, attorneys, agents, successors, and assigns from any and all claims for any action, event, or conduct that predates this Stipulation.

9. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation, and agree and confirm that this Stipulation is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Subject to any claims that Relators may have under 31 U.S.C. § 3730(d) and the separate Stipulation and Order of Settlement and Release between Relators and the United States for their share of the U.S. Settlement Amount in Paragraph 2 above, Relators, for themselves individually, and for their heirs, successors, attorneys, agents, and assigns, release, waive, and forever discharge the United States, its agencies, officers, employees, servants, and agents, from any claims arising from the filing of the Relators' Complaint and from any claims under 31 U.S.C. § 3730.



10. Subject to the exceptions in Paragraph 11 below (concerning excluded claims), and conditioned upon the Trustee's full compliance with Paragraphs 2-6 above and any other terms of the Stipulation that apply to him, the Government releases Narco Freedom and the Trustee Releasees from any civil or administrative monetary claim the Government has under the FCA; 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, for the Covered Conduct. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Narco Freedom, except the Trustee Releasees to the extent they were acting on behalf of Narco Freedom, from any liability of any kind.

11. Notwithstanding the release given in Paragraph 10 of this Stipulation, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as expressly stated in Paragraph 6, any administrative liability;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based on obligations created by this Stipulation; and
- f. Any liability of individuals, other than as set forth in Paragraph 10.

12. The Trustee, on behalf of Narco Freedom, waives and shall not assert any defenses Narco Freedom may have to any federal criminal prosecution or federal 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 Stipulation bars a remedy sought in such federal criminal prosecution or federal administrative action. Nothing in this Paragraph or any other provision of this Stipulation constitutes an agreement by the Government concerning the characterization of the U.S. Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

13. Narco Freedom and the Trustee Releasees fully and finally release the Government, and its agencies, officers, employees, servants, and agents, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Narco Freedom and the Trustee Releasees have asserted, could have asserted, or may assert in the future against the Government, and its agencies, officers, employees, servants, and agents, related to the Covered Conduct and the Government's investigation, prosecution and settlement thereof.

14. The U.S. Settlement Amount shall not be decreased or otherwise be affected as a result of any administrative decision made subsequent to the Effective Date, including the denial of claims for payment submitted by or on behalf of Narco Freedom being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer; and the Trustee, on behalf of Narco Freedom, agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

15. The Trustee, on behalf of Narco Freedom, agrees that Narco Freedom waives and shall not seek payment for any of the health care billings or costs related to the Covered Conduct from any Federal health care program or from health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

16. The Trustee 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Narco Freedom, its present or former officers, directors, employees, shareholders, and agents, in connection with:

- (1) the matters covered by this Stipulation;
- (2) the United States' civil investigation of the Covered Conduct;
- (3) the investigation, defense, and corrective actions undertaken by or on behalf of Narco Freedom in response to the United States' civil investigation of the Covered Conduct (including attorney's fees);
- (4) the negotiation and performance of this Stipulation; and
- (5) any distributions the Trustee makes to the United States pursuant to this Stipulation,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) ("Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Narco Freedom, and the Trustee, on behalf of Narco Freedom, 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 or on behalf of Narco Freedom or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: the Trustee further agrees that within 90 days of the Effective Date of this Stipulation, the Trustee 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 Narco Freedom 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. The Trustee agrees that, with the limitation set forth in the Bankruptcy Settlement, the United States, at a minimum, shall be entitled to recover from Narco Freedom 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 recovery by the United States after the adjustments have been made shall be pursuant to the direction of the Department of Justice and/or the affected agencies, solely in accordance with the specifications set forth in the Bankruptcy Settlement. The United States reserves its rights to disagree with any calculations submitted by Narco Freedom or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable

Costs (as defined in this Paragraph) on Narco Freedom or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

- d. Nothing in this Stipulation shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Narco Freedom's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

17. Except as expressly provided to the contrary in this Stipulation, this Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims they may have against any other person or entity.

18. Any failure by the Government to insist upon full performance of any of the provisions of this stipulation shall not be deemed a waiver of any of the provisions, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full performance of any or all provisions of this Stipulation.

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

20. Each party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

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

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

constitute acceptable, binding signatures for purposes of this Stipulation.

23. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by express courier and by e-mail transmission, followed by postage-prepaid mail, to the following representatives:

To the Government:

Cristine Phillips and Kirti Reddy  
Assistant United States Attorneys  
United States Attorney's Office, Southern District of New York  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, NY 10007  
E-mail: Cristine.Phillips@usdoj.gov  
Kirti.Reddy@usdoj.gov

To Narco Freedom:

Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
anisselson@windelsmarx.com

To the Relators:

Michael R. Minkoff, Esq.  
Borrelli & Associates, P.L.L.C.  
1010 Northern Boulevard, Suite 328  
Great Neck, New York 11021  
MRM@employmentlawyernewyork.com

24. The effective date of this Stipulation is the date upon which this Stipulation is entered by the Court (the "Effective Date").


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

For the United States

Dated: New York, New York  
June 26, 2017

Joon H. Kim  
Acting United States Attorney

By:

  
Kirti Vardya Reddy  
Cristine Lynn Phillips  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

For the Office of Inspector General,  
U.S. Department of Health and Human  
Services

Dated: Washington, District of Columbia  
June \_\_, 2017

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

For Narco Freedom

Dated: New York, New York  
June \_\_, 2017

Chapter 7 Trustee

By:

\_\_\_\_\_  
Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
Tel.: 212.237.1021  
anisselson@windelsmarx.com

For Relators:

Dated: Great Neck, New York  
June \_\_, 2017

BORRELLI & ASSOCIATES, P.L.L.C

By:

\_\_\_\_\_  
Michael R. Minkoff, Esq.  
Borrelli & Associates, P.L.L.C.  
1010 Northern Blvd., Suite 328  
Great Neck, New York 11021

\_\_\_\_\_  
Pamela Brumfield

\_\_\_\_\_  
Guy Flanders

For the United States

Dated: New York, New York  
June \_\_, 2017

Joon H. Kim  
Acting United States Attorney

By: \_\_\_\_\_  
Kirti Vaidya Reddy  
Cristine Irvin Phillips  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

For the Office of Inspector General  
U.S. Department of Health and Human  
Services

Dated: Washington, District of Columbia  
June 5<sup>th</sup>, 2017

By: Lisa M. Re  
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

For Narco Freedom

Dated: New York, New York  
June \_\_, 2017

Chapter 7 Trustee

By: \_\_\_\_\_  
Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
Tel.: 212.237.1021  
anisselson@windelsmarx.com

For Relators:

Dated: Great Neck, New York  
June \_\_, 2017

BORRELLI & ASSOCIATES, P.L.L.C

By: \_\_\_\_\_  
Michael R. Minkoff, Esq.  
Borrelli & Associates, P.L.L.C.  
1010 Northern Blvd., Suite 328  
Great Neck, New York 11021

\_\_\_\_\_  
Pamela Brumfield

\_\_\_\_\_  
Guy Flanders



For the United States

Dated: New York, New York  
June \_\_\_\_, 2017

Joon H. Kim  
Acting United States Attorney

By: \_\_\_\_\_  
Kirti Vaidya Reddy  
Cristine Irvin Phillips  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

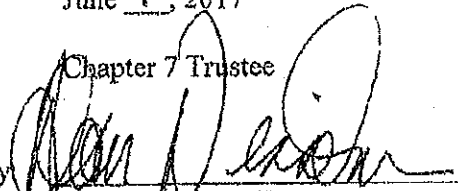
For the Office of Inspector General,  
U.S. Department of Health and Human  
Services

Dated: Washington, District of Columbia  
June \_\_\_\_, 2017

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

For Narco Freedom

Dated: New York, New York  
June 1, 2017

Chapter 7 Trustee  
By:   
Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
Tel.: 212.237.1021  
anisselson@windelsmarx.com

For Relators:

Dated: Great Neck, New York  
June \_\_\_\_, 2017

BORRELLI & ASSOCIATES, P.L.L.C

By: \_\_\_\_\_  
Michael R. Minkoff, Esq.  
Borrelli & Associates, P.L.L.C.  
1010 Northern Blvd., Suite 328  
Great Neck, New York 11021

\_\_\_\_\_  
Pamela Brumfield

\_\_\_\_\_  
Guy Flanders

For the United States

Dated: New York, New York  
June \_\_, 2017

Joon H. Kim  
Acting United States Attorney

By: \_\_\_\_\_  
Kirti Vaidya Reddy  
Cristine Irvin Phillips  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

For the Office of Inspector General,  
U.S. Department of Health and Human  
Services

Dated: Washington, District of Columbia  
June \_\_, 2017

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

For Narco Freedom

Dated: New York, New York  
June \_\_, 2017


Chapter 7 Trustee

By: \_\_\_\_\_  
Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
Tel.: 212.237.1021  
anisselson@windelsmarx.com

For Relators:

Dated: Great Neck, New York  
June 16, 2017

BORRELLI & ASSOCIATES, P.L.L.C

By:   
Michael R. Minkoff, Esq.  
Borrelli & Associates, P.L.L.C.  
1010 Northern Blvd., Suite 328  
Great Neck, New York 11021

\_\_\_\_\_  
Pamela Brumfield

\_\_\_\_\_  
Guy Flanders

For the United States

Dated: New York, New York  
June \_\_, 2017

Joon H. Kim  
Acting United States Attorney

By: \_\_\_\_\_  
Kirti Vaidya Reddy  
Cristine Irvin Phillips  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

For the Office of Inspector General,  
U.S. Department of Health and Human  
Services

Dated: Washington, District of Columbia  
June \_\_, 2017

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

For Narco Freedom

Dated: New York, New York  
June \_\_, 2017

Chapter 7 Trustee

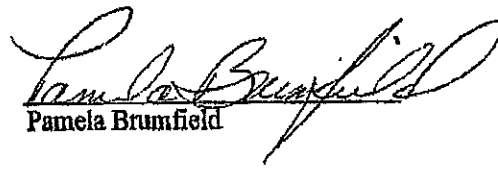
By: \_\_\_\_\_  
Alan Nisselson, Esq.  
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Tel.: 212.237.1021  
anisselson@windelsmarx.com

For Relators:

Dated: Great Neck, New York  
June \_\_, 2017

BORRELLI & ASSOCIATES, P.L.L.C

By: \_\_\_\_\_  
Michael R. Minkoff, Esq.  
Borrelli & Associates, P.L.L.C.  
1010 Northern Blvd., Suite 328  
Great Neck, New York 11021

  
Pamela Brumfield

\_\_\_\_\_  
Guy Flanders

For the United States

Dated: New York, New York  
June \_\_, 2017

Joon H. Kim  
Acting United States Attorney

By: \_\_\_\_\_  
Kirti Vaidya Reddy  
Cristine Irvin Phillips  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

For the Office of Inspector General,  
U.S. Department of Health and Human  
Services

Dated: Washington, District of Columbia  
June \_\_, 2017

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

For Narco Freedom

Dated: New York, New York  
June \_\_, 2017

Chapter 7 Trustee

By: \_\_\_\_\_  
Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
Tel.: 212.237.1021  
anisselson@windelsmarx.com

For Relators:

Dated: Great Neck, New York  
June \_\_, 2017

BORRELLI & ASSOCIATES, P.L.L.C

By: \_\_\_\_\_  
Michael R. Minkoff, Esq.  
Borrelli & Associates, P.L.L.C.  
1010 Northern Blvd., Suite 328  
Great Neck, New York 11021

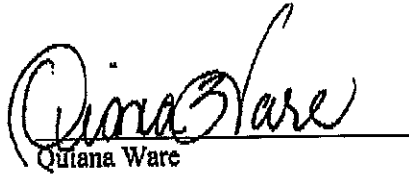
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Guy Flanders  
Guy Flanders

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Quiana Ware

\_\_\_\_\_  
Keisha Weston

\_\_\_\_\_  
Rise Grady

\_\_\_\_\_  
Javonna Delvalle

\_\_\_\_\_  
Lisa Reinhold

Dated: New York, New York  
June \_\_\_\_, 2017


SO ORDERED;

\_\_\_\_\_  
HONORABLE JOHN G. KOELTL  
UNITED STATES DISTRICT JUDGE

\_\_\_\_\_  
Keisha Weston

\_\_\_\_\_  
Quiana Ware

\_\_\_\_\_  
Rise Grady


*Javona DelValle*  
Javonna Delvalle  
*Javona* 

\_\_\_\_\_  
Lisa Reinholt

Dated: New York, New York  
June \_\_, 2017

SO ORDERED:

\_\_\_\_\_  
HONORABLE JOHN G. KOELTL  
UNITED STATES DISTRICT JUDGE

  
Keisha Weston

\_\_\_\_\_  
Quiana Ware

\_\_\_\_\_  
Rise Grady

\_\_\_\_\_  
Javonna Delvalle

\_\_\_\_\_  
Lisa Reinholt

Dated: New York, New York  
June \_\_\_\_, 2017

SO ORDERED:

\_\_\_\_\_  
HONORABLE JOHN G. KOELTL  
UNITED STATES DISTRICT JUDGE

\_\_\_\_\_  
Keisha Weston

\_\_\_\_\_  
Quiana Ware

*Rise Grady*  
\_\_\_\_\_  
Rise Grady

\_\_\_\_\_  
Javonna Delvalle

\_\_\_\_\_  
Lisa Reinholt

Dated: New York, New York  
June \_\_, 2017

SO ORDERED:

\_\_\_\_\_  
HONORABLE JOHN G. KOEHL  
UNITED STATES DISTRICT JUDGE



\_\_\_\_\_  
Keisha Weston

\_\_\_\_\_  
Quiana Ware

\_\_\_\_\_  
Rise Grady

\_\_\_\_\_  
Javonna Delvalle

\_\_\_\_\_  
*Lisa Reinholt*  
Lisa Reinholt

Dated: New York, New York  
June     , 2017

*July 13, 2017*

SO ORDERED:

\_\_\_\_\_  
*John G. Koeltl*

HONORABLE JOHN G. KOELTL  
UNITED STATES DISTRICT JUDGE

# EXHIBIT A

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into as of April 17, 2017, by Alan Nisselson, as Chapter 7 Trustee (the "Trustee") of Narco Freedom, Inc. (the "Debtor," or "Narco Freedom"); the United States of America (the "United States"), by its attorney, Joon H. Kim, Acting United States Attorney for the Southern District of New York; and the State of New York ("New York"), acting through the New York Office of the Attorney General, Medicaid Control Fraud Unit. The Trustee, the United States and New York together are the "Parties" to this Agreement.

### RECITALS

A. Narco Freedom is a not-for-profit corporation that was enrolled in the New York State Medical Assistance Program ("Medicaid") as a provider of substance abuse and mental health services in the New York City area. The company operated outpatient drug-free and methadone maintenance programs, as well as a number of short-term residences commonly known as "3/4 houses" that it called the "Freedom Houses." Alan Brand was Narco Freedom's sole member and CEO for more than 30 years, including during times relevant to the legal proceedings outlined below.

B. Relators Pamela Brumfield, Guy Flanders, Quiana Ware, Jovanna Delvalle, Keisha Weston and Rise Grady, all former employees of Narco Freedom, filed a *qui tam* action in 2012 in the United States District Court for the Southern District of New York (the "District Court") captioned *United States of America ex rel. Pamela Brumfield, et al. v. Narco Freedom and Alan Brand*, Civil Action No. 12-3674 (the "Qui Tam Action"). On June 1, 2016, the above-referenced relators plus one additional relator, Lisa Reinholt (collectively, the "Relators"), filed an amended complaint asserting additional claims against Narco Freedom.

C. In October 2014, the United States commenced a civil action against Narco Freedom seeking preliminary and permanent injunctive relief under the Fraud Injunction Statute, 18 U.S.C. § 1345, captioned *United States of America v. Narco Freedom, Inc.*, Docket No. 14-8593 (the "Action for Injunctive Relief"). The complaint, filed in October 2014, alleged that Narco Freedom was violating the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, by offering short-term residence in three-quarter houses operated by Narco Freedom, as an inducement to Medicaid recipients to enroll in and attend outpatient treatment in Narco Freedom's programs, for which Narco Freedom billed Medicaid (the "Freedom House Kickback Scheme," which took place between 2002 and 2014). In April 2015, Judge John G. Koeltl of the District Court granted the preliminary injunctive relief sought by the United States and appointed a "Temporary Receiver" for Narco Freedom. Later in 2015, Judge Koeltl approved plans for Narco Freedom to transition its operations to other healthcare providers and file for bankruptcy. The Action for Injunctive Relief is closed.

D. Also in October 2014, New York commenced separate criminal and civil forfeiture actions against Narco Freedom, Alan Brand and others captioned, respectively, *People of the State of New York v. Alan Brand, Narco Freedom, Inc., Jason Brand and DASO Development, Inc.*, Indictment No. 2996/2014, Supreme Court, Bronx County (the "Criminal Action"), and *Eric T. Schneiderman and State of New York v. Alan Brand, Jason Brand, DASO Development Corp and Narco Freedom, Inc.*, Index No. 251437/2014, Supreme Court, Bronx County (the "Forfeiture Action"). These initial State actions concerned an allegedly fraudulent insurance claim submitted by Narco Freedom and an alleged kickback Alan Brand personally received from the landlord of a number of 3/4 houses. In connection with these actions, New York instituted a withhold of Medicaid payments to Narco Freedom, pursuant to 18 NYCRR §§504.8(d) and 518.7, 42 C.F.R. § 455.23, NY Public Health Law §§ 31, 32, and NY Soc. Serv. Law § 363-a.

E. In March 2015, by way of superseding indictment in the Criminal Action, the *People of the State of New York v. Alan Brand, Jason Brand, Gerald Bethea, Richard Gross, Narco Freedom, Inc. and DASO Development, Inc.*, Indictment No. 0783/2015, Supreme Court, Bronx County, New York additionally charged Narco Freedom (and others) with, in relevant part, one count of Enterprise Corruption, in violation of Penal Law § 460.20(1)(a), including several pattern acts of Grand Larceny in the First Degree in violation of Penal Law § 155.42, and several counts of Offering a False Instrument for Filing, in violation of Penal Law § 175.35, based on Narco Freedom's participation in the Freedom House Kickback Scheme; Alan Brand's continued involvement with the company after he was excluded from the Medicaid program in October 2014; the excessive treatment of patients in Narco Freedom's drug-free and methadone maintenance programs, for which the company sought reimbursement from the Medicaid program; false statements in regulatory filings that, among other things, Narco Freedom participated in no related-party transactions (for example, by failing to disclose its relationship with DASO, which was owned by Jason Brand); and false certifications that Narco Freedom's Medicaid reimbursement claims complied with all applicable rules and regulations.

F. New York amended the complaint in the Forfeiture Action at the same time to add factual allegations against Narco Freedom (and others) consistent with the new criminal charges.

G. On January 19, 2016 (the "Petition Date"), the Temporary Receiver filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code for Narco Freedom. The United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") opened *In re Narco Freedom, Inc.*, Case No. 16-10123 (the "Bankruptcy Case"). The Bankruptcy Case is before Judge Stuart M. Bernstein.

H. Also on the Petition Date, the United States Trustee appointed Alan Nisselson as interim trustee for the Debtor's estate (the "Estate"). The Trustee has since qualified as permanent trustee and filed for and is covered by a bond.

I. On March 10, 2016, the United States intervened in the *Qui Tam* Action and on May 5, 2016, filed a complaint-in-intervention against Narco Freedom, its former CEO, and others, alleging, as against Narco Freedom, that it violated the False Claims Act (the "FCA"), 31 U.S.C. § 3729 et seq., and the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, by engaging in three separate schemes: 1) the Freedom House Kickback Scheme, as described above; 2) between 2008 and 2011, Narco Freedom paid kickbacks to a third-party operator of three-quarter houses that required its residents to attend Narco Freedom outpatient programs; and 3) between 2009 and 2011, Narco Freedom caused false and fraudulent claims for reimbursement from Medicaid to be submitted for outpatient counseling services that it claimed to have rendered (collectively, the "Federal Covered Conduct").

J. Alan Brand entered a guilty plea in the Criminal Action on April 1, 2016 and made several admissions relative to Narco Freedom in his allocution, including, in relevant part, that he and Narco Freedom (a) were part of a criminal enterprise between January 1, 2009 and March 11, 2015; (b) submitted Medicaid reimbursement claims predicated on illegal kickbacks and violations of state law regarding patient rights; (c) disregarded Alan Brand's exclusion from the Medicaid program; (d) hid the true ownership and control of enterprise-related entities from the New York State Office of Alcoholism and Substance Abuse Services ("OASAS"), the New York Office of Medicaid Inspector General ("OMIG") and other regulatory agencies; and (e) falsely certified that Narco Freedom's Medicaid reimbursement claims complied with all applicable laws and regulations.

K. On July 18, 2016, the United States filed a general unsecured claim in the Bankruptcy Case, Docket No. 146-1 (the "United States Claim"), asserting damages in the amount of \$250,739,886, plus statutory penalties, arising under the FCA from the Federal Covered Conduct.

L. New York filed a claim in the Bankruptcy Case based on the Criminal Action and the Forfeiture Action against Narco Freedom on July 14, 2016 (together with the United States Claim, the "Proofs of Claim," and each a "Proof of Claim"). New York's Proof of Claim 138 is for \$337,974,966, exclusive of statutory trebling penalties, and inclusive of a right of setoff as to withheld Medicaid payments totaling \$2,609,494.31 (the "Medicaid Withholding").

M. There are three pending actions against Narco Freedom involving the United States, New York and/or the Relators (together, the "Pending Actions"):

1. The *Qui Tam* Action. This case is before Judge John G. Koeltl. A proposed “Consent Order” resolving that matter as between the United States, Narco Freedom and the Relators is attached hereto as Exhibit “A”.
2. The Criminal Action. The case is before Justice Steven Barrett. A “Plea Agreement” resolving this action as between New York and Narco Freedom is attached hereto as Exhibit “B”.
3. The Forfeiture Action. This is the companion civil case to the Criminal Action. New York seeks forfeiture and other remedies, including treble damages and penalties under the New York States False Claims Act, N.Y. State Fin. Law § 189 *et seq.* The case is before Justice Wilma Guzman. A “Stipulation and Order of Settlement” resolving this action as between New York and Narco Freedom is attached hereto as Exhibit “C”.

N. The Federal Covered Conduct, together with the wrongdoing alleged in the Criminal Action and Forfeiture Action, and the contemplated admissions of wrongdoing by the Trustee on Narco Freedom’s behalf in the Consent Order, Plea Agreement, and Stipulation and Order of Settlement constitutes the “Covered Conduct” for purposes of this Agreement.

O. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of the claims underlying the Pending Actions and Proofs of Claim, the Parties mutually desire to reach a full and final settlement as set forth below.

#### TERMS AND CONDITIONS

1. Bankruptcy Court Approval; Effective Date.

(a) This Agreement is subject to approval by the Bankruptcy Court. The Trustee shall prepare and file a Bankruptcy Rule 9019 motion seeking the Bankruptcy Court’s approval of this Agreement (the “Motion”), and the United States and New York shall support the Motion and take whatever steps are necessary to obtain the additional court approvals contemplated by Section 2 below.

(b) If the Bankruptcy Court does not approve this Agreement, this Agreement shall be null and void, unless otherwise agreed in writing by the Parties.

(c) The terms and conditions of this Agreement shall become effective and enforceable on the first business day after the date that the Bankruptcy Court order approving this Agreement becomes a Final Order, as defined below (the “Effective Date”). “Final Order”

shall mean an order of the Bankruptcy Court which is not subject to any stay of its effectiveness and (i) as to which (without regard to any time period under Bankruptcy Rule 9024) the time to appeal or petition for certiorari has expired and as to which no timely appeal or petition for certiorari shall then be pending; or (ii) if a timely appeal or writ of certiorari thereof has been sought, the order shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied or reargument or rehearing on remand shall have been denied or resulted in no modification of such order, and the time to take any further appeal or petition for certiorari shall have expired. For purposes of this Agreement, the term "business day" means a day that is a day of the year on which banks are not required or authorized by law to close in New York, New York.

(d) If this Agreement does not become effective and the Effective Date does not occur, then (1) the Agreement shall be deemed null and void; (2) the Parties shall not be deemed to have waived any of their respective rights or to have settled any controversy between them that existed before the execution of the Agreement; (3) the Parties shall be restored *nunc pro tunc* to the respective legal positions that they were in immediately before the execution of the Agreement; (4) neither this Agreement or any exhibit (or document or instrument, if any) delivered hereunder, nor the Motion or anything submitted or said in connection therewith, shall be (i) with prejudice to any person or Party hereto, (ii) deemed to be or construed as an admission by any Party of any act, matter, or proposition, or of the merit or lack of merit of any claim or defense, or (iii) used in any manner or for any purpose in any subsequent proceeding in this action, or in any other action in any court or in any other proceeding; and (5) all negotiations, proceedings, and statements made in connection with the negotiation of this Agreement (i) shall be without prejudice to any person or party herein, (ii) shall not be deemed as or construed to be an admission by any Party herein of any act, matter, or proposition, or of the merit or lack of merit of any claim or defense, and (iii) shall not be offered in evidence in any of the Pending Actions, or any other action or proceeding, except in connection with this Agreement or the enforcement thereof.

2. Resolution of the Pending Actions. Upon receiving written notice by the Trustee that the Effective Date has occurred (which may be by email):

(a) The United States shall work in good faith to expeditiously secure entry of the Consent Order following final Department of Justice approval, which will resolve the *Qui Tam* Action as to Narco Freedom.

(b) New York shall work in good faith to expeditiously secure court approval of the plea and sentence set forth in the Plea Agreement, pursuant to whose terms the Trustee will admit guilt on behalf of Narco Freedom in the Criminal Action.

(c) New York shall work in good faith to expeditiously secure entry of the Stipulation and Order of Settlement, and subsequently file a notice dismissing the Forfeiture Action as to Narco Freedom pursuant to the Stipulation and Order of Settlement.

Should the United States fail to secure entry of the Consent Order, or New York fail to secure court approval of the plea and sentence set forth in the Plea Agreement or court approval of the Stipulation and Order of Settlement within six months of the Effective Date, the Parties shall work with one another in good faith to expeditiously address any obstacles to the resolution of the *Qui Tam*, Criminal Action, or Forfeiture Action.

3. Condition. Only upon the complete resolution of both the *Qui Tam* and Criminal Actions against Narco Freedom as contemplated by Section 2 above: (a) the Trustee shall allow the United States and New York a single, combined claim according to the terms set forth in Section 5(a)-(c) below; (b) the Trustee shall begin the process of dissolving Narco Freedom as contemplated by Section 5(f) below; and (c) the releases referenced or contained in Sections 6 and 7 below shall in each case become effective without any further action by any of the Parties.

4. Claim Allowance and Classification; Dissolution of Narco Freedom.

(a) In full satisfaction of the Proofs of Claim, the Trustee shall allow the United States and New York (together, the "Governments") a single, combined claim of \$586,105,358 (the "Allowed Claim").

(b) The Allowed Claim shall be classified as follows upon the distribution of property of the Estate (the "Distribution"): (a) \$118,400,000, of which \$50,509,440 will be designated for the United States and \$67,890,560 will be designated for New York, will be a general unsecured claim payable under 11 U.S.C. § 726(a)(2); and (b) the remaining \$467,705,358, of which \$200,230,446 will be designated for the United States and \$267,474,912 will be designated for New York, will be subordinated and payable under 11 U.S.C. § 726(a)(4).

(c) The automatic stay pursuant to 11 U.S.C. § 362(b) is hereby modified to permit New York to exercise a right of set off as to the Medicaid Withholding. For the sake of clarity, the Medicaid Withholding is money already in New York's possession that New York will be permitted to keep. This provision shall not afford New York any other rights as a secured creditor.

(d) The United States and New York each agree and acknowledge that they shall not seek to amend or supplement their respective Proofs of Claim regarding the Covered Conduct for any reason or circumstance that has arisen or may arise, and that the Allowed Claim is their sole basis for any Distribution from the Estate and their sole source for any other form of relief



against the Debtor's Estate based on any released or unreleased claim they may have against Narco Freedom for the Covered Conduct, with the exception of a potential amended subordinated claim as expressly permitted in paragraph 6 of the Consent Order.

(e) For the sake of clarity with regard to paragraph 16(c) of the Consent Order and paragraph 13(c) of the Stipulation and Order of Settlement, which, among other things, state that the United States and New York shall be entitled to recover any overpayment, plus applicable interest and penalties, tied to Unallowable Costs, as that term is commonly defined in the Consent Order and the Stipulation and Order of Settlement, the United States and New York agree that they shall not seek to amend or supplement their respective Proofs of Claim in connection with that entitlement.

(f) The Relators filed no claim in the bankruptcy and thus are not entitled to their own share of the Distribution; rather they shall be entitled to a part of the United States' designated share of the Distribution, as set forth in a separate agreement between them and the United States.

(g) The Trustee shall work in good faith to expeditiously secure the dissolution of Narco Freedom, pursuant to any applicable provisions of the New York Not-for-Profit Corporations Law, and published guidance and procedures of the New York State Office of the Attorney General, Charities Bureau.

5. Releases between the Trustee, the United States and the Relators. The Consent Order contains the terms of the releases between the Trustee, on behalf of Narco Freedom, the United States and the Relators.

6. Releases between the Trustee and New York. Both the Plea Agreement and Stipulation and Order of Settlement contain the terms of the releases between the Trustee, on behalf of Narco Freedom, and New York.

7. Representations and Warranties.

(a) The Trustee hereby represents and warrants that, subject to the approval of the Bankruptcy Court as set forth in Section 1 above, (i) he has the full power, authority and legal right to execute and deliver this Agreement and to perform his obligations hereunder; (ii) this Agreement has been duly executed and delivered by the Trustee and constitutes a valid and binding agreement of the Trustee enforceable against him in accordance with its terms; and (iii) this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

(b) The signatories for the Governments represent and warrant that (i) they have full power, authority and legal right to execute and deliver this Agreement on behalf of the Governments; (ii) this Agreement has been duly executed and delivered by them and constitutes the valid and binding agreement of the Governments, enforceable against the Governments in accordance with its terms; (iii) in executing this Agreement, the signatories have done so with the full knowledge of any and all rights that the Governments may have with respect to the controversies herein compromised; and (iv) this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

8. Entire Agreement. This Agreement, together with the Consent Order, Plea Agreement, and Stipulation and Order of Settlement constitutes the complete agreement between the Parties with respect to the issues covered by this Agreement. This Agreement may not be amended except by written consent of the Parties.

9. Successors. This Agreement is binding on the Parties' successors, transferees, heirs, attorneys, agents, and assigns.

10. 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.

11. Further Assurances. Each Party shall execute and deliver any document or instrument reasonably requested and needed by the other Party after the date of this Agreement to effectuate the intent of this Agreement.

12. Construction. For purposes of construction, 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. The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Agreement or the scope or content of any of its provisions. Any reference in this Agreement to a section is to a section of this Agreement. "Including" is not intended to be a limiting term.

13. Severability. In the event that any term or provision of Sections 9-20 of this Agreement or any application thereof is deemed to be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

14. No Third Party Beneficiaries. The Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

15. Governing Law. This Agreement is governed by the laws of the United States.

16. Exclusive Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over the enforcement of this Agreement and any and all disputes between or among the Parties, whether in law or equity, arising out of or relating to this Agreement. The Parties consent to the entry of final orders or judgments by the Bankruptcy Court if it is determined that consent of the Parties is required for the Bankruptcy Court to enter final orders or judgment consistent with Article III of the Constitution.

17. Disclosure. All Parties consent to the disclosure of this Agreement, and information about this Agreement, by any one of them to the public.

18. Notices. All notices, requests, demands, consents and communications necessary or required under this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, by overnight mail with confirmation, by facsimile (receipt confirmed) or by electronic means, to:

Narco Freedom:

Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
E-Mail: [anisselson@windelsmarx.com](mailto:anisselson@windelsmarx.com)

The United States:

Cristine Phillips and Kirti Reddy  
Assistant United States Attorneys  
United States Attorney's Office, Southern District of New York  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, NY 10007  
E-mail: [Cristine.Phillips@usdoj.gov](mailto:Cristine.Phillips@usdoj.gov)  
[Kirti.Reddy@usdoj.gov](mailto:Kirti.Reddy@usdoj.gov)

New York:

Alee N. Scott  
Special Assistant Attorney General  
New York State Attorney General, Medicaid Fraud Control Unit  
120 Broadway, 13<sup>th</sup> Floor  
New York, NY 10271  
E-mail: [alee.scott@ag.ny.gov](mailto:alee.scott@ag.ny.gov)

A Party or signatory may change its address for receiving notice by giving notice of a new address in the manner provided herein. All such notices, requests, demands, consents and other communications shall be deemed to have been duly given or sent two (2) days following the date on which mailed, or on the date on which delivered by courier or by hand or by facsimile or electronic transmission (receipt confirmed), as the case may be, and addressed as aforesaid.

19. Counterparts; Electronic Copy of Signatures. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. Each Party or signatory may evidence its execution of this Agreement by delivery to the other Party or signatory of scanned or faxed copies of its signature, with the same effect as the delivery of an original signature.

**[Signature pages follow]**

**IN WITNESS WHEREOF**, each Party or signatory has caused this Agreement to be duly executed and delivered as of the date set forth above.

**TRUSTEE**

**THE CHAPTER 7 TRUSTEE OF NARCO  
FREEDOM, INC.**

By: 

Alan Nisselson

Windels Marx Lane & Mittendorf, LLP

156 West 56th Street

New York, NY 10019

[TRUSTEE SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

**THE UNITED STATES**


**JOON H. KIM  
ACTING UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF NEW YORK**

By: Kirti Vaidya Reddy  
Kirti Vaidya Reddy  
Cristine Irvin Phillips  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

[THE UNITED STATES SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

**NEW YORK**

**THE STATE OF NEW YORK  
ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL OF THE STATE OF  
NEW YORK**

BY: 

Alee N. Scott  
Special Assistant Attorney General  
Medicaid Fraud Control Unit  
120 Broadway, 13th Floor  
New York, NY 10271  
Telephone: (212) 417-5322  
Email: Alee.scott@ag.ny.GOV

[NEW YORK SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

**EXHIBIT A TO THE SETTLEMENT AGREEMENT**



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

-----	X
UNITED STATES OF AMERICA <i>ex rel.</i>	:
PAMELA BRUMFIELD <i>et al.</i> ,	:
	:
Plaintiffs,	: 12 Civ. 3674 (JGK)

	:	<b>CONSENT ORDER</b>
v.	:	
NARCO FREEDOM, INC. and ALAN BRAND,	:	
	:	
Defendants.	:	

-----	X
UNITED STATES OF AMERICA,	:
	:
Plaintiff-Intervenor,	:
	:
v.	:
NARCO FREEDOM, INC., ALAN BRAND,	:
GERALD BETHEA, JOINING HANDS	:
MANAGEMENT INCORPORATED, BERNARD	:
RORIE and DEVORAH HAIGLER,	:
	:
Defendants.	: X
-----	

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the “Stipulation”), is entered into by and among plaintiff the United States of America (the “United States” or the “Government”), by its attorney Joon H. Kim, United States Attorney for the Southern District of New York, Alan Nisselson (the “Trustee”), in his capacity as the Chapter 7 Bankruptcy Trustee of Narco Freedom, Inc. (“Narco Freedom”) and relators Pamela Brumfield, Guy Flanders, Quiana Ware, Javonna Delvalle, Keisha Weston, Rise Grady, and Lisa Reinholt (collectively, “Relators”), through their authorized representative;

WHEREAS, the Trustee is acting solely in his capacity as the Chapter 7 Bankruptcy Trustee of Narco Freedom for all purposes in connection with this Stipulation;

WHEREAS, Narco Freedom is a New York not-for-profit corporation that formerly maintained its principal place of business in the Bronx, New York;

WHEREAS, until September 2015, Narco Freedom was engaged in the business of operating outpatient drug rehabilitation programs, including providing services reimbursed by Medicaid;

WHEREAS, on or about May 8, 2012, relators Pamela Brumfield, Guy Flanders, Quiana Ware, Javonna Delvalle, Keisha Weston, and Rise Grady filed a complaint in the above-referenced action against Narco Freedom and its former Chief Executive Officer, Alan Brand, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), on behalf of the United States;

WHEREAS, on March 10, 2016, the United States intervened in the action and on May 5, 2016, filed a complaint-in-intervention (“United States Complaint”) against Narco Freedom, its former CEO, and others, alleging, as against Narco Freedom, that it violated the False Claims Act (the “FCA”), 31 U.S.C. § 3729 et seq., and the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, by engaging in three separate schemes: 1) between 2002 and 2014, Narco Freedom offered short-term residence in three-quarter houses operated by Narco Freedom, as an inducement to Medicaid recipients to enroll in and attend outpatient treatment in Narco Freedom’s programs, for which Narco Freedom billed Medicaid; 2) between 2008 and 2011, Narco Freedom paid kickbacks to third-party operators of three-quarter houses for requiring the residents of their houses to attend Narco Freedom outpatient programs; and 3) between 2009 and 2011, Narco Freedom caused false and fraudulent claims for reimbursement from Medicaid to be submitted for outpatient counseling services that it claimed to have rendered (collectively, the “Covered Conduct”);

WHEREAS, on June 1, 2016, the above-referenced relators plus one additional

relator, Lisa Reinholt, filed an amended complaint asserting additional claims against Narco Freedom (“Relators’ Complaint”);

WHEREAS, previously, in October 2014, the United States had commenced a civil action against Narco Freedom with this Court seeking injunctive relief, and the Court had appointed a “Temporary Receiver” for Narco Freedom;

WHEREAS, on January 19, 2016, the Temporary Receiver filed on behalf of Narco Freedom a petition for bankruptcy under Chapter 7 of the Bankruptcy Code, in the matter of *In re Narco Freedom, Inc.*, 16-10123 (S.D.N.Y.) (the “Bankruptcy”), and Alan Nisselson, Esq., was appointed as Chapter 7 Trustee for Narco Freedom;

WHEREAS, on July 18, 2016, the United States filed a general unsecured claim in the Bankruptcy, Docket No. 146-1 (the “United States Claim”), asserting its damages and penalties under the FCA arising from the Covered Conduct;

WHEREAS, the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“New York”), also filed a general unsecured claim in the Bankruptcy, Docket No. 138-2 (the “New York Claim”), at around the same time asserting its damages, pursuant to state and common law, for some of the same Covered Conduct and other alleged unlawful acts by Narco Freedom;

WHEREAS, the United States, the Trustee and Relators (collectively, the “Parties”), have reached a full and final, mutually agreeable resolution of the claims arising out of the Covered Conduct;

WHEREAS, in the Bankruptcy, the Trustee, the United States, and New York have reached a resolution of both the United States Claim and the New York Claim (together, the “Combined Government Claim”); and

WHEREAS, the terms of this stipulation have been previously reviewed and

approved by the bankruptcy court ("Bankruptcy Court") in the context of the resolution of the Combined Government Claim;

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Trustee, on behalf of Narco Freedom, consents to this Court's exercise of personal jurisdiction over Narco Freedom.
2. The United States, New York, and the Trustee, on behalf of Narco Freedom, previously executed a separate settlement agreement resolving the Combined Government Claim (the "Bankruptcy Settlement"), which has been approved by and entered in the Bankruptcy Court and is attached hereto as Exhibit A. Pursuant to the terms of the Bankruptcy Settlement, the Trustee and the United States agreed that the United States' portion of the Combined Government Claim shall be allowed in the following amounts: (a) \$50,509,440 as a non-priority general unsecured claim (the "U.S. Portion of the Allowed General Unsecured Claim"), to be paid pro rata under 11 U.S.C. § 726(a)(2) with all other allowed non-priority general unsecured claims when the Trustee makes distributions to such creditors; and (b) \$200,230,446 as a subordinated claim (the "U.S. Portion of the Allowed Subordinated Claim"), to be paid pro rata under 11 U.S.C. § 726(a)(4) with all other allowed subordinated claims to the extent money is available to distribute on such claims in accordance with the distribution provisions of 11 U.S.C. § 726. The combined total of the U.S. Portion of the Allowed General Unsecured Claim and the U.S. Portion of the Allowed Subordinated Claim shall be referred to herein as the "U.S. Settlement Amount."
3. The Trustee shall work in good faith to expeditiously secure the dissolution of Narco Freedom.
4. The Trustee, on behalf of Narco Freedom, admits, acknowledges, and accepts Narco Freedom's responsibility for the following facts based on the acts and omissions of certain

of Narco Freedom's former directors, officers and employees:

- a. Between 2006 and 2014, Narco Freedom operated short-term residences known as "Freedom Houses." As a condition of residence at the Freedom Houses, Narco Freedom required residents to enroll in and attend a Narco Freedom outpatient program.
- b. One purpose of the Freedom Houses was to induce Medicaid recipients to use Narco Freedom's outpatient programs by providing those individuals with subsidized housing.
- c. Between 2008 and 2011, Narco Freedom made monthly payments to operators of three-quarter houses pursuant to purported "lease agreements" executed by Narco Freedom, but these payments were not actually part of a legitimate lease arrangement, and instead were paid to incentivize the operators to require the residents of their houses to attend Narco Freedom outpatient programs.
- d. In 2010, Narco Freedom directed and paid counselors employed in its outpatient treatment programs in Red Hook, Brooklyn, to perform "corrective action and maintenance" on patient records, which included creating records reflecting that counselors had treated certain patients that the counselors had not in fact treated; claims based upon these false records were submitted to and paid by Medicaid.

5. As detailed below, the Trustee agrees to cooperate fully with the United States' investigation relating to the Covered Conduct, including of individuals and entities not released in this Stipulation. Specifically, the Trustee, at the expense of the Chapter 7 bankruptcy estate of Narco Freedom (the "Estate"), shall cause to be maintained all of Narco Freedom's currently existing paper and electronic documents relating to the Covered Conduct for a period of three years from the Effective Date (the "Records Retention Period"). During the Records Retention Period, the Trustee also shall provide complete access to all non-privileged documents and information requested by the United States relating to the Covered Conduct and the allegations in

the United States' operative complaint. Further, the Trustee, on Narco Freedom's behalf, agrees to furnish to the United States, upon request, complete and un-redacted copies of all non-privileged documents, reports, memoranda of interviews, or records in his possession, custody, or control concerning any investigation of the Covered Conduct that he or Narco Freedom has undertaken, or that has been performed by another on his or Narco Freedom's behalf.

Additionally, the Trustee agrees not to impair the cooperation of Narco Freedom's current and former directors, officers, and employees, for interviews and testimony, consistent with the rights and privileges of such individuals. At the conclusion of the Records Retention Period, the Trustee or his successor also shall contact the Government pursuant to the procedure set forth in Paragraph 23 below at least sixty calendar days prior to discarding any records covered by this Paragraph and shall give the Government an opportunity to take custody of such records.

6. Effective upon the Effective Date of this Stipulation, Narco Freedom is hereby excluded from participation in Medicare, Medicaid, and all Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f), for a period of 50 years, based on the [DATE] guilty plea entered by the Trustee on behalf of Narco Freedom to one count of Enterprise Corruption, in violation of Penal Law §460.20(1)(a), including three separate pattern acts of Grand Larceny in the First Degree, in violation of Penal Law §155.42, and two counts of Offering a False Instrument for Filing in the First Degree, in violation of Penal Law §175.35, in the Supreme Court of the City of New York, County of the Bronx. This exclusion is authorized under 42 U.S.C. § 1320a-7(a)(1) and 42 U.S.C. § 1320a-7(b)(7). Such exclusion shall have national effect. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by Narco Freedom in any capacity while Narco Freedom is excluded. This payment prohibition applies to Narco Freedom and all other individuals and entities (including, for example, anyone who employs or

contracts with Narco Freedom, and any hospital or other provider where Narco Freedom provides services). The exclusion applies regardless of who submits the claim or other request for payment. Violation of the conditions of the exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. The Estate agrees to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion; however, any such hold harmless claim against the Estate, if allowed, shall only be allowed as a subordinated claim and be paid pro rata under 11 U.S.C. § 726(a)(4) with all other allowed subordinated claims to the extent money is available to distribute on such claims in accordance with the distribution provisions of 11 U.S.C. § 726. For avoidance of doubt, the United States' sole hold harmless remedy shall be in the form of an amended subordinated claim against the Estate. The Trustee waives any further notice of the exclusion and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If Narco Freedom wishes to be reinstated, Narco Freedom must submit a written request for reinstatement to the OIG in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Such request may be made to the OIG no earlier than 120 days prior to the expiration of the 50-year period of exclusion. Reinstatement becomes effective upon application by Narco Freedom, approval of the application by the OIG, and notice of reinstatement by the OIG. Obtaining another license, moving to another state, or obtaining a provider number from a Medicare contractor, a state agency, or a Federal health care program does not reinstate Narco Freedom's eligibility to participate in these programs.

7. In consideration of the Trustee's execution of this Stipulation and the Trustee's release as set forth in Paragraph 8 below, Relators, for themselves and for their heirs, successors,

attorneys, agents, and assigns, agree not to file a bankruptcy claim in the Bankruptcy, and further agree to release Narco Freedom, the Trustee, to the extent he was acting on behalf of Narco Freedom, and the Trustee's attorneys and agents, to the extent they were acting on behalf of the Trustee in connection with the Bankruptcy, the Relators' Complaint or the United States

Complaint (collectively and together with the Trustee, the "Trustee Releasees"): (a) from any claims Relators have asserted, or could have asserted, or may assert in the future for any acts or omissions that predated this Stipulation; (b) from any claims that Relators have or could have asserted on behalf of the United States for the conduct alleged in the Relators' Complaint or the United States Complaint under the FCA, 31 U.S.C. § 3729, *et seq.*; and (c) from any claims to recover their expenses, costs or attorney's fees from Narco Freedom, pursuant to 31 U.S.C. § 3730(d).

8. In consideration of Relators' execution of this Stipulation and Relators' releases as set forth in Paragraph 7 above, Narco Freedom, and the Trustee Releasees, on behalf of Narco Freedom, release Relators and their heirs, attorneys, agents, successors, and assigns from any and all claims for any action, event, or conduct that predates this Stipulation.

9. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation, and agree and confirm that this Stipulation is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Subject to any claims that Relators may have under 31 U.S.C. § 3730(d) and the separate Stipulation and Order of Settlement and Release between Relators and the United States for their share of the U.S. Settlement Amount in Paragraph 2 above, Relators, for themselves individually, and for their heirs, successors, attorneys, agents, and assigns, release, waive, and forever discharge the United States, its agencies, officers, employees, servants, and agents, from any claims arising from the filing of the Relators' Complaint and from any claims under 31 U.S.C. § 3730.



10. Subject to the exceptions in Paragraph 11 below (concerning excluded claims), and conditioned upon the Trustee's full compliance with Paragraphs 2-6 above and any other terms of the Stipulation that apply to him, the Government releases Narco Freedom and the Trustee Releasees from any civil or administrative monetary claim the Government has under the FCA; 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, for the Covered Conduct. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Narco Freedom, except the Trustee Releasees to the extent they were acting on behalf of Narco Freedom, from any liability of any kind.

11. Notwithstanding the release given in Paragraph 10 of this Stipulation, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as expressly stated in Paragraph 6, any administrative liability;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based on obligations created by this Stipulation; and
- f. Any liability of individuals, other than as set forth in Paragraph 10.

12. The Trustee, on behalf of Narco Freedom, waives and shall not assert any defenses Narco Freedom may have to any federal criminal prosecution or federal 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 Stipulation bars a remedy sought in such federal criminal prosecution or federal administrative action. Nothing in this Paragraph or any other provision of this Stipulation constitutes an agreement by the Government concerning the characterization of the U.S. Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

13. Narco Freedom and the Trustee Releasees fully and finally release the Government, and its agencies, officers, employees, servants, and agents, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Narco Freedom and the Trustee Releasees have asserted, could have asserted, or may assert in the future against the Government, and its agencies, officers, employees, servants, and agents, related to the Covered Conduct and the Government's investigation, prosecution and settlement thereof.

14. The U.S. Settlement Amount shall not be decreased or otherwise be affected as a result of any administrative decision made subsequent to the Effective Date, including the denial of claims for payment submitted by or on behalf of Narco Freedom being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer; and the Trustee, on behalf of Narco Freedom, agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

15. The Trustee, on behalf of Narco Freedom, agrees that Narco Freedom waives and shall not seek payment for any of the health care billings or costs related to the Covered Conduct from any Federal health care program or from health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

16. The Trustee 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Narco Freedom, its present or former officers, directors, employees, shareholders, and agents, in connection with:

- (1) the matters covered by this Stipulation;
- (2) the United States' civil investigation of the Covered Conduct;
- (3) the investigation, defense, and corrective actions undertaken by or on behalf of Narco Freedom in response to the United States' civil investigation of the Covered Conduct (including attorney's fees);
- (4) the negotiation and performance of this Stipulation; and
- (5) any distributions the Trustee makes to the United States pursuant to this Stipulation,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) ("Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Narco Freedom, and the Trustee, on behalf of Narco Freedom, 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 or on behalf of Narco Freedom or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: the Trustee further agrees that within 90 days of the Effective Date of this Stipulation, the Trustee 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 Narco Freedom 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. The Trustee agrees that, with the limitation set forth in the Bankruptcy Settlement, the United States, at a minimum, shall be entitled to recover from Narco Freedom 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 recovery by the United States after the adjustments have been made shall be pursuant to the direction of the Department of Justice and/or the affected agencies, solely in accordance with the specifications set forth in the Bankruptcy Settlement. The United States reserves its rights to disagree with any calculations submitted by Narco Freedom or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable

Costs (as defined in this Paragraph) on Narco Freedom or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

- d. Nothing in this Stipulation shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Narco Freedom's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

17. Except as expressly provided to the contrary in this Stipulation, this Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims they may have against any other person or entity.

18. Any failure by the Government to insist upon full performance of any of the provisions of this stipulation shall not be deemed a waiver of any of the provisions, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full performance of any or all provisions of this Stipulation.

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

20. Each party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

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

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

constitute acceptable, binding signatures for purposes of this Stipulation.

23. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by express courier and by e-mail transmission, followed by postage-prepaid mail, to the following representatives:

To the Government:

Cristine Phillips and Kirti Reddy  
Assistant United States Attorneys  
United States Attorney's Office, Southern District of New York  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, NY 10007  
E-mail: Cristine.Phillips@usdoj.gov  
Kirti.Reddy@usdoj.gov

To Narco Freedom:

Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
anisselson@windelsmarx.com

To the Relators:

Michael R. Minkoff, Esq.  
Borrelli & Associates, P.L.L.C.  
1010 Northern Boulevard, Suite 328  
Great Neck, New York 11021  
MRM@employmentlawyernewyork.com

24. The effective date of this Stipulation is the date upon which this Stipulation is entered by the Court (the "Effective Date").

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

For the United States

Dated: New York, New York  
\_\_\_\_\_, 2017

Joon H. Kim  
Acting United States Attorney

By: \_\_\_\_\_  
Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
Tel.: 212.237.1021  
anisselson@windelsmarx.com

By: \_\_\_\_\_  
Kirti Vaidya Reddy  
Cristine Irvin Phillips  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

For Relators:

Dated: Great Neck, New York  
\_\_\_\_\_, 2017

BORRELLI & ASSOCIATES, P.L.L.C

For the Office of Inspector General,  
U.S. Department of Health and Human  
Services

Dated: Washington, District of Columbia  
\_\_\_\_\_, 2017

By: \_\_\_\_\_  
Michael R. Minkoff, Esq.  
Borrelli & Associates, P.L.L.C.  
1010 Northern Blvd., Suite 328  
Great Neck, New York 11021

By: \_\_\_\_\_  
Robert K. DeConti  
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

\_\_\_\_\_  
Pamela Brumfield

\_\_\_\_\_  
Guy Flanders

For Narco Freedom

Dated: New York, New York  
\_\_\_\_\_, 2017

Chapter 7 Trustee

\_\_\_\_\_  
Quiana Ware

\_\_\_\_\_  
Javonna Delvalle

\_\_\_\_\_  
Keisha Weston

\_\_\_\_\_  
Rise Grady

\_\_\_\_\_  
Lisa Reinholt

Dated: New York, New York  
\_\_\_\_\_, 2017

SO ORDERED:

\_\_\_\_\_  
HONORABLE JOHN G. KOELTL  
UNITED STATES DISTRICT JDUGE



**EXHIBIT B TO THE SETTLEMENT AGREEMENT**

**PLEA AGREEMENT**

1. This is a plea agreement between the Office of the Attorney General of the State of New York (“OAG”) and **NARCO FREEDOM, INC.**, hereinafter referred to as “the corporation” or “the defendant.” Alan Nisselson, as Chapter 7 Trustee (the “Trustee”) of the corporation, has granted authority to **NICOLE LLORET, ESQ.** and **SCOTT MORVILLO, ESQ.** of Morvillo LLP (the “Trustee’s attorneys”) to enter into this memorandum of agreement (“the Agreement”) on behalf of the corporation. This Agreement constitutes the entire understanding between the corporation and OAG. There are no promises, agreements or conditions, express or implied, other than those set forth in this document. No modification, deletion or addition to this Agreement will be valid or binding on either party unless put into writing and signed by both parties.
2. The corporation, through the Trustee, acknowledges that it is satisfied with the representation provided by the Trustee’s attorneys. The corporation, through the Trustee, acknowledges that it understands that it has the right to have an attorney throughout the prosecution and trial of the charge pending against it and that if it cannot afford an attorney, one would be appointed.
3. **THE PLEA AND RELATED TERMS:**
  - a. The corporation, through the Trustee’s attorneys, acknowledges that it is currently charged by indictment, Bronx County Indictment 0783/2015, with the crimes of Enterprise Corruption, Penal Law §460.20(1)(a), and other related crimes.
  - b. The corporation, through the Trustee’s attorneys, agrees that it shall plead guilty in Bronx County Supreme Court to one count of Enterprise Corruption (Penal Law §460.20(1)(a), Count One) with the following three pattern acts: Grand Larceny in the First Degree (Penal Law §155.42, Pattern Act One); Grand Larceny in the First Degree (Penal Law §155.42, Pattern Act Two); and Grand Larceny in the First Degree (Penal Law §155.42, Pattern Act Three); as well as one count of Offering a False Instrument for Filing in the First Degree (Penal Law §175.35, Count Fourteen); and one count of Offering a False Instrument for Filing in the First Degree (Penal Law §175.35, Count Twenty).
  - c. The plea will take place at a date and time as solely determined by OAG, but only if the Bankruptcy Court first authorizes the Trustee to enter the plea on behalf of the corporation.
  - d. The corporation has been advised of, and understands, the nature of the charges against it, the elements of the offenses with which it is charged, and the range of permissible sentences.
  - e. By pleading guilty, the corporation gives up certain rights, which it acknowledges and has

discussed with the Trustee's attorneys:

- i. The corporation understands that by pleading guilty it is giving up the right to a trial by a judge or by a twelve-person jury drawn from a broad cross-section of the community.
  - ii. The corporation understands that by pleading guilty it is giving up the right to have the People produce witnesses to testify against it.
  - iii. The corporation understands that by pleading guilty it is giving up the right to have the Trustee's attorneys cross-examine any witnesses who may testify against the corporation.
  - iv. The corporation understands that by pleading guilty it is giving up the right to have the Trustee's attorneys produce witnesses to testify for it.
  - v. The corporation understands that by pleading guilty it is giving up the right to remain silent and its right to either testify or not testify at trial.
  - vi. The corporation understands that by pleading guilty it is giving up the right to have the People prove its guilt beyond a reasonable doubt.
  - vii. The corporation understands that by pleading guilty it is giving up the right to present any and all defenses at trial.
  - viii. The corporation understands that by pleading guilty it is giving up the right to claim that the police did anything illegal in regard to this charge and its right to a hearing to determine if that police conduct was, in fact, illegal.
- f. The corporation understands that by pleading guilty, its guilty plea will have the same effect as a verdict of guilt at trial.
- g. The corporation understands and acknowledges that it has the right to appeal its conviction and sentence to an intermediate appellate court which may consider and determine any question of law or issue of fact involving error or defect in the criminal court proceedings which may have adversely affected it, and, if the corporation is indigent, to prosecute the appeal and to have counsel appointed to represent it.
- i. The corporation understands that its right to appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty and that it would ordinarily retain its right to an appeal even after pleading guilty.
  - ii. The corporation acknowledges that it has been advised by the Trustee's attorneys of its right to appeal, its right to be represented by an attorney on appeal, and its right to have an attorney appointed to represent it on appeal if it cannot afford one.

- iii. The corporation acknowledges that it is waiving its right to appeal because it wishes to accept a particular plea agreement offered by the People of the State of New York on the condition that the corporation gives up its right to appeal.
- iv. The corporation acknowledges that it intends this waiver to be a comprehensive and unconditional waiver of any and all claims it could raise on an appeal of its conviction or sentence (except claims of violation of the constitutionally protected right to a speedy trial, illegality of the sentence imposed, ineffective assistance of counsel and lack of competency to stand trial) and that it is the corporation's understanding and intention that this Agreement will be a complete and final disposition of the matter.
- v. The corporation further acknowledges that no off-the-record coercion or promises have affected its decision to plead guilty and/or to waive its right to appeal and it is aware of the potential sentences the court may impose in its discretion.
- vi. Accordingly, having read and understood all of its appellate rights and having discussed it with the Trustee's attorneys, the corporation hereby knowingly, intelligently, and voluntarily waives its right to appeal its conviction and sentence upon the plea of guilty that it will enter in this case.
- h. The corporation hereby agrees to enter a plea of guilty in accordance with the terms of the plea offer, which has been made to it, having consulted with the Trustee's attorneys and having been advised of all of the rights listed above, as well as all of the terms and provisions of this Agreement that are listed below.
- i. The corporation also waives all defenses based on the statute of limitations, pre-indictment delay, speedy arraignment or speedy trial under Article 30 of the CPL, speedy sentence date pursuant to CPL 380.30, the New York State Constitution, the United States Constitution and case law with respect to any prosecution that is not time-barred on the date that this Agreement is signed in the event that (i) the corporation's conviction is later vacated for any reason, (ii) the corporation violates this Agreement, or (iii) the corporation's plea is not accepted by the Court or is permitted to be withdrawn after being entered.

**4. THE ALLOCUTION:**

- a. The corporation's allocution shall be as set forth in this paragraph. At the time of the guilty plea, under oath, the corporation through counsel retained by the Chapter 7 Trustee and upon the authority granted to the Trustee by the Bankruptcy Court, will admit to and acknowledge the truthfulness of the following:

- i. The defendant admits that it, Narco Freedom Inc., is organized as a not-for-profit charitable corporation under New York State law. The defendant was incorporated on or about June 1, 1971, and, at the time of the Indictment, was headquartered at 250 Grand Concourse, Bronx, New York, and was an enrolled provider of healthcare services for the New York State Medical Assistance Program ("Medicaid"). At the time of the indictment, the defendant provided services including substance abuse treatment services and mental health services, and was, during all times relevant to this case, almost entirely funded by public funds. The defendant acknowledges that its substance abuse treatment programs were regulated by the New York State Office of Alcoholism and Substance Abuse Services ("OASAS") and further acknowledges that, as a not-for-profit charitable corporation, it was and is required to operate and to be operated to realize its charitable mission.
- ii. The defendant admits that from the early 1980s until on or about October 27, 2014, Alan Brand was its sole member and that until late July 2014, he was also its Chief Executive Officer ("CEO").
- iii. The defendant admits that Gerald Bethea, during all times relevant, was an employee and high managerial agent of Narco Freedom. The defendant admits that Gerald Bethea was the head of its Brooklyn operations, and became CEO when Alan Brand left Narco Freedom in October, 2014.
- iv. The defendant admits that Richard Gross, for all times relevant, was the Comptroller and a high managerial agent of Narco Freedom.
- v. The defendant admits that DASO Development, Inc. is a New York State registered business corporation providing construction services, and during all relevant times, was headquartered at 1735 West Farms Road, Bronx, New York, and owned by Jason Brand.

#### **ENTERPRISE CORRUPTION (COUNT 1)**

- vi. The defendant admits that, as charged in the Indictment, on or about and between January 1, 2009 and March 11, 2015, in the County of the Bronx and elsewhere in the State of New York, the defendant, Alan Brand, Gerald Bethea, Richard Gross,

and DASO Development, along with other persons, acting in concert and aiding and abetting each other, committed the crime of Enterprise Corruption, in violation of Penal Law §460.20(1)(a), in that, having knowledge of the existence of a Criminal Enterprise (hereinafter referred to as the “Brand Criminal Enterprise”), the nature of its activities and being associated with that criminal enterprise, the high managerial agents of Narco Freedom, including those listed above, intentionally conducted and participated in the affairs of the Brand Criminal Enterprise by participating in a pattern of criminal activity.

- vii. The defendant admits that, as charged in the Indictment, the defendant, Alan Brand, Gerald Bethea, and Richard Gross, along with other persons, were members of and associated with an enterprise in which they shared a common purpose of engaging in criminal conduct, and were associated in a structure that was distinct from the pattern of criminal activity and that had a continuity of existence, structure and criminal purpose beyond the scope of individual criminal incidents. The defendant and these others were members of the Brand Enterprise which constituted a “criminal enterprise” as defined by Penal Law §460.10(3). During the period of this offense the defendant participated in a pattern of criminal activity, via the actions of its high managerial agents, including those listed above, with the intent to participate in the affairs of the Brand Enterprise. Specifically, the defendant admits to the following criminal pattern acts:

**GRAND LARCENY: EXCLUSION [PATTERN ACT 1]**

- viii. The defendant admits that, as charged in the Indictment, it (Narco Freedom), Alan Brand, acting individually as chief executive officer and as a high managerial agent of Narco Freedom, and Gerald Bethea, acting individually and as a high managerial agent of Narco Freedom, acting in concert and aided and abetted by others, committed the crime of Grand Larceny in the First Degree, in violation of Penal Law §155.42, in that in the County of Bronx and elsewhere in the State of New York, on or about and between October 29, 2014, and March 1, 2015, the defendant, Alan Brand, and Gerald Bethea, stole property from the State of New York, and the value of said property exceeded one million dollars. In doing so, the

defendant, Alan Brand, Gerald Bethea, and others submitted or caused to be submitted claims to Medicaid that did not meet all conditions of participation in the Medicaid program, and as a result, Medicaid, in reliance on the false representations caused and made by the defendant and others, paid Narco Freedom in excess of one million dollars, to which the defendant and others were not entitled. Said conduct was committed by:

- a. Intentionally submitting and causing to be submitted claims for reimbursement to Medicaid which were predicated on violations of various rules and regulations governing the Medicaid program, including violations of the exclusion and financial disclosure rules; specifically, the defendant admits that on or about October 28, 2014, Alan Brand was excluded by the Office of the Medicaid Inspector General (OMIG) from participation as a provider in the Medicaid program and thus, prohibited from having any involvement in any activity relating to the furnishing of medical care, services or supplies to recipients of medical assistance for which claims are submitted to Medicaid, or relating to claiming or receiving payment for medical care, services or supplies under the Medicaid program. The defendant admits that despite this prohibition, Gerald Bethea, who was then its CEO, permitted and conspired with Alan Brand to permit Alan Brand to secretly advise, consult and exert influence over the day-to-day operation and management of Narco Freedom from on or about October 29, 2014 through March 1, 2015.

**GRAND LARCENY: OPIOID TREATMENT PROGRAM [PATTERN ACT 2]**

- ix. The defendant admits that as charged in the Indictment, it (Narco Freedom), Alan Brand, acting individually as chief executive officer and as a high managerial agent of Narco Freedom, and Gerald Bethea, acting individually and as a high managerial agent of Narco Freedom, acting in concert and aided and abetted by others, committed the crime of Grand Larceny in the First Degree, in violation of Penal Law §155.42, in that in the County of Bronx and elsewhere in the State of New York, on or about and between July 1, 2013 and October 31, 2014, the defendant,

Alan Brand, and Gerald Bethea, stole property from the State of New York, and the value of said property exceeded one million dollars. In doing so, the defendant, Alan Brand, Gerald Bethea, and others submitted or caused to be submitted claims to Medicaid that did not meet all conditions of participation in the Medicaid program, and as a result, Medicaid, in reliance on the false representations caused and made by the defendant, via the high managerial agents listed above, and others, paid Narco Freedom in excess of one million dollars, to which the defendant and others were not entitled. Said crimes were committed by:

- a. Intentionally submitting and causing to be submitted claims for reimbursement to Medicaid which were predicated on violations of state law regarding patient rights; specifically, the defendant admits that during the time Alan Brand was CEO of Narco Freedom, as well as during the time of his exclusion when he still advised, consulted and exerted influence over the day-to-day affairs of Narco Freedom, patients of Narco Freedom treatment programs were not given individualized treatment plans, were subjected to static treatment plans, and were not receiving treatment regimens that were the least restrictive modalities to meet their needs.

**GRAND LARCENY: OUTPATIENT SERVICES [PATTERN ACT 3]**

- x. The defendant admits that as charged in the Indictment, it (Narco Freedom), Alan Brand, acting individually as chief executive officer and as a high managerial agent of Narco Freedom, and Gerald Bethea, acting individually and as a high managerial agent of Narco Freedom, acting in concert and aided and abetted by others, committed the crime of Grand Larceny in the First Degree, in violation of Penal Law §155.42, in that in the County of Bronx and elsewhere in the State of New York, on or about and between January 1, 2009 and October 31, 2014, the defendant, Alan Brand, and Gerald Bethea, stole property from the State of New York, and the value of said property exceeded one million dollars. In doing so, the defendant, Alan Brand, Gerald Bethea, and others submitted or caused to be submitted claims to Medicaid that did not meet all conditions of participation in the Medicaid program, and as a result, Medicaid, in reliance on the false representations



caused and made by the defendant, via the high managerial agents listed above, and others, paid Narco Freedom in excess of one million dollars, to which the defendant and others were not entitled. Said crimes were committed by:

- a. Intentionally submitting and causing to be submitted claims for reimbursement to Medicaid for substance abuse treatment services which were predicated on an illegal kickback; specifically, the defendant admits that during the time Alan Brand was its CEO, patients residing in its "Freedom Houses" were required to attend its own treatment programs as a condition of residency; the defendant admits those who resided in Freedom Houses were not free to choose which substance abuse program they wished to attend.
- b. Intentionally submitting and causing to be submitted claims for reimbursement to Medicaid for substance abuse treatment services which were predicated on financial gain rather than therapeutic need and thus, in excess of patient need; specifically, the defendant admits that during the time Alan Brand was its CEO as well as during the time of his exclusion when he still continued to advise, consult and exert influence over the day-to-day affairs of Narco Freedom, patients that resided in its "Freedom Houses," commonly known as three-quarter houses or sober homes, were required to attend its own treatment programs a minimum of three or more times per week, regardless of the patient's individualized need for treatment.

**OFIF CHAR 500 (COUNT 14)**

- xi. The defendant admits that on or about October 21, 2013, in the County of the Bronx and elsewhere in the State of New York acting individually and in concert with Alan Brand and Richard Gross, it committed the crime of Offering a False Instrument for Filing in the First Degree, in violation of Penal Law §175.35, in that knowing that a written instrument contained a false statement and false information, and with intent to defraud the State of New York, the defendant and others offered and presented the written instrument to a public office, public servant, public authority and public benefit corporation with the knowledge and

belief that it would be filed with, registered and recorded in, and otherwise become a part of the records of such public office, public servant, public authority and public benefit corporation. Specifically, the defendant admits that Richard Gross, while employed as its Comptroller, and Alan Brand, while employed as its CEO, knowingly submitted and caused to be submitted to the Office of the New York State Attorney General Charities Bureau, a form CHAR500, which falsely stated, among other things, that it, Narco Freedom, had not participated in any related-party transactions when in fact it had.

#### **OFIF MEDICAID CERTIFICATION (COUNT 20)**

- xii. The defendant admits that on or about July 29, 2014, in the County of the Bronx and elsewhere in the State of New York acting individually and in concert with Richard Gross, it committed the crime of Offering a False Instrument for Filing in the First Degree, in violation of Penal Law §175.35, in that knowing that a written instrument contained a false statement and false information, and with intent to defraud the State of New York, the defendant and others offered and presented the written instrument to a public office, public servant, public authority and public benefit corporation with the knowledge and belief that it would be filed with, registered and recorded in, and otherwise become a part of the records of such public office, public servant, public authority and public benefit corporation. Specifically, the defendant admits that Richard Gross, while employed as its Comptroller, knowingly submitted and caused to be submitted to the Department of Health, a Medicaid Billing Certification, which falsely stated that it, Narco Freedom, would submit claims for reimbursement in accordance with all Medicaid rules and regulations and when in fact it had not and would not over the applicable reporting period.

#### **5. OAG COMMITMENTS:**

- a. OAG, at the time of sentencing, will recommend a three-year conditional discharge provided that the corporation executes the Stipulation and Order of Settlement in connection with the asset forfeiture action (*Eric T. Schneiderman and State of New York v. Alan Brand, Jason Brand, DASO Development Corp and Narco Freedom, Inc.*, Index No. 251437/2014, Supreme Court,

Bronx County) (the "Forfeiture Action"). It is understood that ultimately, with or without a sentence recommendation from OAG, the sentence to be imposed on the corporation remains within the sole discretion of the Court. Moreover, nothing in this Agreement limits OAG's right to present any facts and make any arguments relevant to sentencing to the Court, or to take any position on post-sentencing motions.

- b. The corporation understands that the Court has the authority to impose any lawful sentence, pursuant to the corporation's plea of guilty. The maximum permissible sentence for the crime of Enterprise Corruption (Penal Law §460.20(1)(a)) is a three-year conditional discharge and a fine.
  - c. OAG will not prosecute the corporation for any crime related to the conduct described in Section 4, other than the crimes to which the corporation pleads guilty as set forth in Section 3.
  - d. This Agreement is limited to OAG and cannot bind other government agencies.
- 6. THE CORPORATION'S COMMITMENTS:**
- a. The Trustee, on behalf of the corporation, shall sign the Stipulation and Order of Settlement in connection with the Forfeiture Action.

**[This Space Left Intentionally Blank]**

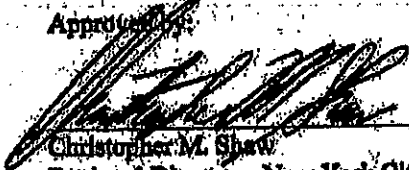
7. The corporation, through the Trustee and his attorneys, understands these rights, and all of the terms, provisions, and conditions of this Agreement, which the Trustee and his attorneys have read completely. The Trustee and his attorneys acknowledge that they have executed this Agreement on the corporation's behalf freely, voluntarily, knowingly, and without coercion of any kind. No threats or promises have been made to the corporation to induce the Trustee or his attorneys to sign this Agreement or to enter a guilty plea on the corporation's behalf further to the terms of this Agreement.

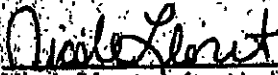
Dated: April 12, 2017  
Bronx, New York

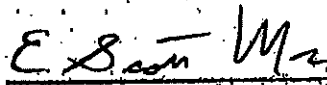
ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York

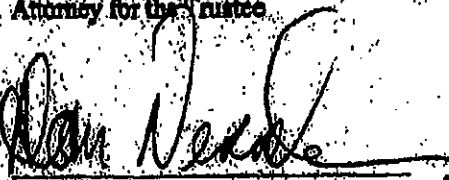
By:

  
Megan S. Medland  
Special Assistant Attorney General  
Medicaid Fraud Control Unit

Approved:  
  
Christopher M. Shaw  
Regional Director - New York City  
Medicaid Fraud Control Unit

  
Nicole Loret April 14, 2017  
Morvillo LLP  
Attorney for the Trustee

  
Scott Morvillo April 17, 2017  
Morvillo LLP  
Attorney for the Trustee

  
Alan Nisselson April 13, 2017  
Winkels Marx Lane & Mitendorf, LLP  
Trustee

**EXHIBIT C TO THE SETTLEMENT AGREEMENT**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

ERIC T. SCHNEIDERMAN,  
Attorney General of the State of New York,

Plaintiff-Claiming Authority,

- and -

STATE OF NEW YORK,

Co-Plaintiff,

- against -

ALAN BRAND, JASON BRAND, GERALD BETHEA,  
RICHARD GROSS, JOHN CORNACHIO, JONATHAN  
BRAND, DASO DEVELOPMENT CORP., B&C  
MANAGEMENT CORP. and NARCO FREEDOM,  
INC.,

Criminal Defendants,

NANCY BRAND

Non-Criminal Defendant.

Bronx County Index No.:  
251437/2014 (Guzman, J.)

**STIPULATION AND ORDER OF SETTLEMENT**

This Stipulation and Order of Settlement (the “Stipulation”) is entered into by and among the State of New York, acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“MFCU”) (collectively, the “State”), and Alan Nisselson (the “Trustee”), in his capacity as the Chapter 7 Bankruptcy Trustee of Criminal Defendant Narco Freedom, Inc. (“Narco Freedom”). The State and the Trustee are collectively referred to as the “Parties.”

WHEREAS, the Trustee is acting solely in his capacity as the Chapter 7 Bankruptcy Trustee of Narco Freedom for all purposes in connection with this Stipulation;

WHEREAS, Narco Freedom is a New York not-for-profit corporation that formerly

provided substance abuse treatment services to beneficiaries of the New York Medical Assistance Program (“Medicaid”) and maintained its principal place of business in the Bronx, New York;

WHEREAS, on October 20, 2014, the State commenced this forfeiture action (the “Forfeiture Action”) by filing a Complaint naming Narco Freedom, among others, a defendant, to recover the proceeds of criminal conduct and civil damages against Narco Freedom for alleged violations of Social Services Law § 145-b;

WHEREAS, at or around the same time, the State commenced a criminal action against Narco Freedom, among others, and the current charges are set forth in a superseding indictment in an action captioned *People of the State of New York v. Alan Brand, Jason Brand, Gerald Bethea, Richard Gross, Narco Freedom, Inc. and Daso Development, Inc.*, Indictment No. 0783/2015 (the “Indictment”), Supreme Court, Bronx County (the “Criminal Action”);

WHEREAS, on March 17, 2015, the State filed an Amended Complaint in the Forfeiture Action for alleged violations of the New York State False Claims Act, N.Y. State Fin. Law §§ 189 *et seq.*; Social Services Law § 145-b; Executive Law § 63(12); and Executive Law § 63-c; and pursuant to CPLR Article 13-A, incorporating new allegations against Narco Freedom, and naming additional defendants;

WHEREAS, in connection with the Criminal and Forfeiture Actions, the State implemented a withhold of Medicaid payments to Narco Freedom, pursuant to 18 NYCRR §§504.8(d) and 518.7, 42 C.F.R. § 455.23, NY Public Health Law §§ 31, 32, and NY Soc. Serv. Law § 363-a;

WHEREAS, on January 19, 2016, a petition for bankruptcy under Chapter 7 of the Bankruptcy Code was filed on behalf of Narco Freedom, a bankruptcy case was opened

captioned *In re Narco Freedom, Inc.*, 16-10123 (S.D.N.Y.) (the “Bankruptcy”), and Alan Nisselson, Esq., was appointed as Chapter 7 Trustee for Narco Freedom;

WHEREAS, on July 14, 2016, the State filed a general unsecured claim in the Bankruptcy, Docket No. 138-2 (the “New York Claim”), asserting damages pursuant to the Forfeiture Action for alleged unlawful acts by Narco Freedom;

WHEREAS, the United States of America (the “United States”) also filed a general unsecured claim in the Bankruptcy, Docket No. 146-1 (the “United States Claim”) at around the same time asserting its damages and penalties under the False Claims Act, 31 U.S.C. § 3729 et seq., for some of the same unlawful conduct as alleged by the State;

WHEREAS, the Trustee, on behalf of Narco Freedom, wishes to resolve the New York Claim and Narco Freedom’s civil liability in the Asset Forfeiture Action;

WHEREAS, the acts committed by Narco Freedom, as described in Paragraph 5 below, occurred during the time period January 1, 2009 through March 11, 2015, and are hereinafter referred to as the “Covered Conduct”;

WHEREAS, as a result of the Covered Conduct, Narco Freedom caused the State of New York to suffer damages in at least the amount of the settlement under this Agreement;

WHEREAS, the Trustee represents that Narco Freedom lacks the assets and ability to make full financial restitution to the State for the losses to the Medicaid Program as a result of the Covered Conduct;

WHEREAS, the Trustee and the State have reached a full and final, mutually agreeable resolution of the claims arising out of the Covered Conduct;

WHEREAS, in the Bankruptcy, the Trustee, the State, and the United States have reached a resolution of both the New York Claim and the United States Claim (together, the “Combined



Government Claim”); and

WHEREAS, the terms of this Stipulation have been previously reviewed and approved by the bankruptcy court (“Bankruptcy Court”) in the context of the resolution of the Combined Government Claim;

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. The Office of the Attorney General, by the Civil Enforcement Division of the Medicaid Fraud Control Unit, represents that it has the authority to enter into this Agreement and to effectuate a final resolution with regard to the Covered Conduct on behalf of the State. It is understood that the Trustee, on behalf of Narco Freedom, is entering into this Stipulation in reliance on this representation.

2. The Parties consent to this Court’s exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them with respect to this action.

3. The State, the United States, and the Trustee, on behalf of Narco Freedom, previously executed a separate settlement agreement resolving the Combined Government Claim (the “Bankruptcy Settlement”), which has been approved by and entered in the Bankruptcy Court and is attached hereto as Exhibit “A”. Pursuant to the terms of the Bankruptcy Settlement, the Trustee and the State have agreed that the State’s portion of the Combined Government Claim shall be allowed in the following amounts: (a) \$67,890,560 as a non-priority general unsecured claim (the “State Portion of the Allowed General Unsecured Claim”), to be paid pro rata under 11 U.S.C. § 726(a)(2) with all other allowed non-priority general unsecured claims when the Trustee makes distributions to such creditors; and (b) \$267,474,912 as a subordinated claim (the “State Portion of the Allowed Subordinated Claim”), to be paid pro rata under 11 U.S.C. § 726(a)(4) with all other

allowed subordinated claims to the extent money is available to distribute on such claims. In addition, the automatic stay pursuant to 11 U.S.C. § 362(b) shall be modified to permit the State to exercise a right of setoff as to Medicaid payments the State withheld from Narco Freedom totaling \$2,609,494.31—money already in the State’s possession that the State will be permitted to keep (the “Medicaid Withholding”). (Together, the State Portion of the Allowed General Unsecured Claim, the State Portion of the Allowed Subordinated Claim, and the Medicaid Withholding are referred to as the “State Settlement Amount”.)

4. The Trustee shall work in good faith to expeditiously secure the dissolution of Narco Freedom, pursuant to any applicable provisions of the New York Not-for-Profit Corporation Law, and the published guidance and procedures of the New York State Office of the Attorney General, Charities Bureau.

5. The Trustee, on behalf of Narco Freedom, admits, acknowledges, and accepts Narco Freedom’s responsibility for the following Covered Conduct:

(a) General Admissions

- i. Narco Freedom is organized as a not-for-profit charitable corporation under New York State law;
- ii. Narco Freedom was incorporated on or about June 1, 1971, and, at the time of the Indictment, was headquartered at 250 Grand Concourse, Bronx, New York, and was an enrolled provider of healthcare services for Medicaid;
- iii. At the time of the Indictment, Narco Freedom provided services including substance abuse treatment services and mental health services and was, during all times relevant to this case, almost entirely funded by public funds;
- iv. Narco Freedom acknowledges that its substance abuse treatment programs were regulated by the New York State Office of Alcoholism and Substance Abuse Services (“OASAS”) and further acknowledges that, as a not-for-profit charitable corporation, it was and is required to operate and to be operated to realize its charitable mission;
- v. From the early 1980s until on or about October 27, 2014, Alan Brand was Narco Freedom’s sole member and until late July 2014, he was also its Chief Executive Officer (“CEO”);

- vi. Gerald Bethea, during all times relevant, was an employee and high managerial agent of Narco Freedom. Gerald Bethea was the head of its Brooklyn operations, and became CEO when Alan Brand left Narco Freedom in October 2014;
- vii. Richard Gross, for all times relevant, was the Comptroller and a high managerial agent of Narco Freedom; and
- viii. DASO Development, Inc. (“DASO Development”) is a New York State registered business corporation providing construction services, and during all relevant times, was headquartered at 1735 West Farms Road, Bronx, New York, and owned by Jason Brand.

(b) Enterprise Corruption (Count One) – As charged in the Indictment, on or about and between January 1, 2009 and March 11, 2015, in the County of the Bronx and elsewhere in the State of New York, Narco Freedom, Alan Brand, Gerald Bethea, Richard Gross, and DASO Development, along with other persons, acting in concert and aiding and abetting each other, committed the crime of Enterprise Corruption, in violation of Penal Law §460.20(1)(a), in that, having knowledge of the existence of a Criminal Enterprise (hereinafter referred to as the “Brand Criminal Enterprise”), the nature of its activities and being associated with that criminal enterprise, the high managerial agents of Narco Freedom, including those listed above, intentionally conducted and participated in the affairs of the Brand Criminal Enterprise by participating in a pattern of criminal activity; and

- i. As charged in the Indictment, Alan Brand, Gerald Bethea, and Richard Gross, along with other persons, were members of and associated with an enterprise in which they shared a common purpose of engaging in criminal conduct, and were associated in a structure that was distinct from the pattern of criminal activity and that had a continuity of existence, structure and criminal purpose beyond the scope of individual criminal incidents. Narco Freedom and these others were members of the Brand Criminal Enterprise which constituted a “criminal enterprise” as defined by Penal Law §460.10(3).
- ii. During the period of this offense, Narco Freedom participated in a pattern of criminal activity, via the actions of its high managerial agents, including those listed above, with the intent to participate in the affairs of the Brand Criminal Enterprise. Specifically, Narco Freedom admits to the criminal pattern acts below.

(c) Grand Larceny: Exclusion [Pattern Act One] – As charged in the Indictment, Narco Freedom, Alan Brand, acting individually as CEO and as a high managerial agent of Narco Freedom, and Gerald Bethea, acting individually and as a high managerial agent of Narco Freedom, acting in concert and aided and abetted by others, committed the crime of Grand Larceny in the First Degree, in violation of Penal Law §155.42, in that in the County of Bronx and elsewhere in the State of New York, on or about and between October 29, 2014, and March 1, 2015, Narco Freedom, Alan Brand, and Gerald Bethea, stole property from the State of New York, and the value of said property exceeded one million dollars. In doing so, Narco Freedom, Alan Brand, Gerald Bethea, and others submitted or

caused to be submitted claims to Medicaid that did not meet all conditions of participation in the Medicaid program, and as a result, Medicaid, in reliance on the false representations caused and made by Narco Freedom and others, paid Narco Freedom in excess of one million dollars, to which Narco Freedom and others were not entitled. This conduct was committed by:

- i. Intentionally submitting and causing to be submitted claims for reimbursement to Medicaid which were predicated on violations of various rules and regulations governing the Medicaid program, including violations of the exclusion and financial disclosure rules; specifically, Narco Freedom admits that on or about October 28, 2014, Alan Brand was excluded by the Office of the Medicaid Inspector General (“OMIG”) from participation as a provider in the Medicaid program and thus, prohibited from having any involvement in any activity relating to the furnishing of medical care, services or supplies to recipients of medical assistance for which claims are submitted to Medicaid, or relating to claiming or receiving payment for medical care, services or supplies under the Medicaid program.
- ii. Narco Freedom admits that, despite this prohibition, Gerald Bethea, who was then its CEO, permitted and conspired with Alan Brand to permit Alan Brand to secretly advise, consult, and exert influence over the day-to-day operation and management of Narco Freedom from on or about October 29, 2014 through March 1, 2015.

(d) Grand Larceny: Opioid Treatment Program [Pattern Act Two] – As charged in the Indictment, Narco Freedom, Alan Brand, acting individually as chief executive officer and as a high managerial agent of Narco Freedom, and Gerald Bethea, acting individually and as a high managerial agent of Narco Freedom, acting in concert and aided and abetted by others, committed the crime of Grand Larceny in the First Degree, in violation of Penal Law §155.42, in that in the County of Bronx and elsewhere in the State of New York, on or about and between July 1, 2013 and October 31, 2014, Narco Freedom, Alan Brand, and Gerald Bethea, stole property from the State of New York, and the value of said property exceeded one million dollars. In doing so, Narco Freedom, Alan Brand, and Gerald Bethea, and others submitted or caused to be submitted claims to Medicaid that did not meet all conditions of participation in the Medicaid program, and as a result, Medicaid, in reliance on the false representations caused and made by Narco Freedom, via the high managerial agents listed above, and others, paid Narco Freedom in excess of one million dollars, to which Narco Freedom and others were not entitled. These crimes were committed by:

- i. Intentionally submitting and causing to be submitted claims for reimbursement to Medicaid which were predicated on violations of state law regarding patient rights; specifically, Narco Freedom admits that during the time Alan Brand was CEO of Narco Freedom, as well as during the time of his exclusion when he still advised, consulted, and exerted influence over the day-to-day affairs of Narco Freedom, patients of Narco Freedom treatment programs were not given individualized treatment plans, were subjected to static treatment plans, and were not receiving

treatment regimens that were the least restrictive modalities to meet their needs.

(e) Grand Larceny: Outpatient Services [Pattern Act Three] – As charged in the Indictment, Narco Freedom, Alan Brand, acting individually as chief executive officer and as a high managerial agent of Narco Freedom, and Gerald Bethea, acting individually and as a high managerial agent of Narco Freedom, acting in concert and aided and abetted by others, committed the crime of Grand Larceny in the First Degree, in violation of Penal Law §155.42, in that in the County of Bronx and elsewhere in the State of New York, on or about and between January 1, 2009 and October 31, 2014, Narco Freedom, Alan Brand, and Gerald Bethea, stole property from the State of New York, and the value of said property exceeded one million dollars. In doing so, Narco Freedom, Alan Brand, and Gerald Bethea, and others submitted or caused to be submitted claims to Medicaid that did not meet all conditions of participation in the Medicaid program, and as a result, Medicaid, in reliance on the false representations caused and made by Narco Freedom, via the high managerial agents listed above, and others, paid Narco Freedom in excess of one million dollars, to which Narco Freedom and others were not entitled. These crimes were committed by:

- i. Intentionally submitting and causing to be submitted claims for reimbursement to Medicaid for substance abuse treatment services which were predicated on an illegal kickback; specifically, Narco Freedom admits that during the time Alan Brand was its CEO, patients residing in its “Freedom Houses,” commonly known as three-quarter houses or sober homes, were required to attend its own treatment programs as a condition of residency; Narco Freedom admits those who resided in Freedom Houses were not free to choose which substance abuse program they wished to attend;
- ii. Intentionally submitting and causing to be submitted claims for reimbursement to Medicaid for substance abuse treatment services which were predicated on financial gain rather than therapeutic need and thus, in excess of patient need; specifically, Narco Freedom admits that during the time Alan Brand was its CEO as well as during the time of his exclusion when he still continued to advise, consult, and exert influence over the day-to-day affairs of Narco Freedom, patients that resided in its “Freedom Houses,” commonly known as three-quarter houses or sober homes, were required to attend its own treatment programs a minimum of three or more times per week, regardless of the patient’s individualized need for treatment.

(f) Offering a False Instrument for Filing: Form CHAR500 (Count Fourteen) – On or about October 21, 2013, in the County of the Bronx and elsewhere in the State of New York acting individually and in concert with Alan Brand and Richard Gross, Narco Freedom committed the crime of Offering a False Instrument for Filing in the First Degree, in violation of Penal Law §175.35, in that knowing that a written instrument contained a false statement and false information, and with intent to defraud the State of New York, Narco Freedom and others offered and presented the written instrument to a public office,

public servant, public authority and public benefit corporation with the knowledge and belief that it would be filed with, registered and recorded in, and otherwise become a part of the records of such public office, public servant, public authority and public benefit corporation. Specifically, Narco Freedom admits that Richard Gross, while employed as its Comptroller, and Alan Brand, while employed as its CEO, knowingly submitted and caused to be submitted to the Office of the New York State Attorney General Charities Bureau, a form CHAR500, which falsely stated, among other things, that Narco Freedom had not participated in any related-party transactions when in fact it had.

(g) Offering a False Instrument for Filing: Medicaid Certification (Count Twenty) – On or about July 29, 2014, in the County of the Bronx and elsewhere in the State of New York acting individually and in concert with Richard Gross, Narco Freedom committed the crime of Offering a False Instrument for Filing in the First Degree, in violation of Penal Law §175.35, in that knowing that a written instrument contained a false statement and false information, and with intent to defraud the State of New York, Narco Freedom and others offered and presented the written instrument to a public office, public servant, public authority and public benefit corporation with the knowledge and belief that it would be filed with, registered and recorded in, and otherwise become a part of the records of such public office, public servant, public authority and public benefit corporation. Specifically, Narco Freedom admits that Richard Gross, while employed as its Comptroller, knowingly submitted and caused to be submitted to the Department of Health, a Medicaid Billing Certification, which falsely stated that Narco Freedom would submit claims for reimbursement in accordance with all Medicaid rules and regulations and when in fact it had not and would not over the applicable reporting period.

6. Subject to the provisions of Paragraph 9 (concerning excluded claims) below, and conditioned upon the Trustee's full compliance with Paragraph 3 above, the State releases Narco Freedom, the Trustee, to the extent he was acting on behalf of Narco Freedom, and the Trustee's attorneys and agents, to the extent they were acting on behalf of the Trustee in connection with the Bankruptcy or the Asset Forfeiture or Criminal Actions (collectively and together with the Trustee, the "Trustee Releasees"), from any civil monetary claim that the State has for the Covered Conduct under the New York State False Claims Act, N.Y. State Fin. Law §§ 189 et seq.; Social Services Law § 145-b; Executive Law § 63(12); Executive Law § 63-c; CPLR Article 13-A; or the common law theories of payment by mistake, money had and received, unjust enrichment and fraud.

7. Except as provided in Paragraphs 13 and 20 herein, upon receipt of the distributions contemplated in Paragraph 3 herein, the State will not seek further repayment for the Covered Conduct from Narco Freedom. In consideration of those distributions, the payments shall be received in full satisfaction of the obligations of Narco Freedom hereunder, and the State shall not seek to impose on Narco Freedom any other financial obligation related to the Covered Conduct.

8. This Stipulation relates solely to Medicaid funds received by Narco Freedom, and not to any other relationship between Narco Freedom and the State.

9. Notwithstanding the releases given in Paragraph 6 of this Stipulation, or any other term of this Stipulation, the State specifically does not release any person or entity from any of the following liabilities:

- a. Any civil, criminal or administrative liability arising under state revenue codes;
- b. Any criminal liability;
- c. Any administrative liability, including mandatory or permissive exclusion from the State's Medicaid Program;
- d. Any civil or administrative liability that any person or entity has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule, including but not limited to, any and all claims: involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws, unless expressly covered by the release in Paragraph 6 above;
- e. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;

- f. Any liability which may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid program on a capitated basis, other than liability of Narco Freedom to the State for the Covered Conduct;
- g. Any liability for personal injury, patient abuse or neglect arising from the Covered Conduct; and
- h. Any liability based upon obligations created by this Stipulation.

10. The Trustee, on behalf of Narco Freedom, waives and shall not assert any defenses Narco Freedom may have to any criminal prosecution or administrative action relating to the Covered Conduct, 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 Stipulation bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Stipulation constitutes an agreement by the State concerning the characterization of the State Settlement Amount for purposes of New York State Tax Law.

11. Narco Freedom and the Trustee Releasees fully and finally release the State, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Narco Freedom and the Trustee Releasees have asserted, could have asserted, or may assert in the future against the State, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the State's investigation and prosecution thereof.

12. The State Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any State payor; and the Trustee, on behalf of Narco Freedom, agrees not to submit any further claim or to resubmit to any State



payor any previously-denied claims, or cause any further claim or adjustment to be submitted or resubmitted, and agrees not to appeal any such denials of claims.

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

- i. the matters covered by this Stipulation;
- ii. the State's audit(s) and civil and any criminal investigation(s) of the matters covered by this Stipulation;
- iii. Narco Freedom's investigation, defense, and corrective actions undertaken in response to the State's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Stipulation (including attorney's fees);
- iv. the negotiation and performance of this Stipulation; and
- v. the distributions the Trustee makes relating to this Stipulation (including attorney's fees and costs);

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

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by Narco Freedom, and the Trustee, on behalf of Narco Freedom, 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 Consolidated Fiscal Report ("CFR"), cost report, cost statement, information statement, or payment request submitted by or on behalf of Narco Freedom or any of its member corporations or affiliates to the Medicaid Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Trustee further agrees that within ninety (90) days of the Effective Date of this Stipulation he shall identify to applicable Medicaid fiscal agents, any Unallowable Costs (as defined in Paragraph 13(a)) included in payments previously sought from 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 Narco Freedom or any of its member corporations 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. The Trustee agrees that, with the limitation set forth in the Bankruptcy Settlement, the State, at a minimum, shall be entitled to recover from Narco Freedom 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, appeals, or requests for payment. Any recovery by the State after the adjustments have been made shall be pursuant to the direction of the State and/or the affected agencies, solely in accordance with the specifications set forth in the Bankruptcy Settlement. The State reserves its rights to disagree with any calculations submitted by Narco Freedom or any of its member corporations or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Narco Freedom's or any of its member corporation's or affiliates' CFRs, cost reports, cost statements, or information reports, appeals or other payment requests. Nothing in

this Stipulation shall constitute a waiver of the rights of the State to audit, examine, or re-examine the books and records of Narco Freedom to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. All distributions to the State hereunder shall be made by certified check, bank check, money order, or wire transfer payable to the "New York State Medicaid Fraud Control Restitution Fund."

15. Other than distributions by wire transfer, all distributions shall be delivered to the Medicaid Fraud Control Unit, Finance Department, 13th Floor, 120 Broadway, New York, New York 10271. MFCU shall provide the Trustee with instructions for distributions by wire transfer. Any other notices pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier and/or email followed by postage prepaid first class mail, and addressed as follows:

TO THE STATE:

Alee Scott  
Special Assistant Attorney General  
Medicaid Fraud Control Unit  
New York State Office of the Attorney General  
120 Broadway, 13<sup>th</sup> Floor  
New York, NY 10271  
Telephone: (212) 417-5322  
Email: [Alee.scott@ag.ny.gov](mailto:Alee.scott@ag.ny.gov)

TO NARCO FREEDOM:

Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
Telephone: (212) 237-1021  
Email: [anisselson@windelsmarx.com](mailto:anisselson@windelsmarx.com)

16. This Stipulation is intended to be for the benefit of the Parties only and, by this instrument, the Parties do not release any claims against any other person or entity. Nothing in this Stipulation constitutes an agreement by the State concerning the characterization of any relevant statutes or regulations, and the Stipulation shall not be construed as an admission by the State as to any contested issue encompassed by the State's investigation.

17. This Stipulation is binding upon all Parties and upon Narco Freedom's bankruptcy estate (the "Estate").

18. This Stipulation is a settlement of civil liability only. This Stipulation constitutes the complete and full agreement reached by the State and the Trustee, on behalf of Narco Freedom, with regard to financial liability relating to the Covered Conduct, and it may not be changed in any respect, except by a writing duly executed by the Parties or their authorized representatives.

19. Nothing in this Stipulation shall be construed to release or discharge Narco Freedom's criminal liability, which shall be resolved only upon the record of Supreme Court, Bronx County, Criminal Term, Indictment Number 783-2015.

20. In the event that Narco Freedom fails to fulfill its obligations under the terms of this Stipulation, the State may, at MFCU's sole discretion, declare this Stipulation void, retain all sums delivered to it prior to the date of non-compliance, and pursue all remedies existing prior to execution of this Stipulation.

21. No portion of the State Settlement Amount, nor any related expense on the part of Narco Freedom shall be claimed as any tax loss or expense, nor claimed on any government contract or rate application, except for any expense of administration of the Estate.

22. The Trustee, on behalf of Narco Freedom, waives any claim for any tax rebate or refund, or other governmental payment, from the State of New York, until the State Settlement Amount is fully satisfied. In the State's sole discretion, the State may recover or offset any such payment without further notice to Narco Freedom for credit toward the State Settlement Amount.

23. The terms of this Stipulation shall remain effective notwithstanding any appeal, collateral attack or challenge to any criminal conviction, plea or sentencing of Narco Freedom or any other person, including but not limited to the reversal, modification, or dismissal of all or any portion of such conviction and sentence, or the conviction, plea or sentencing of any other person.

24. Neither the Trustee nor Narco Freedom shall take any action, or make or permit to be made any public statement denying, directly or indirectly, any finding in this Stipulation, or creating the impression that this Stipulation is without factual basis. Nothing in this Paragraph affects the Trustee's or Narco Freedom's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other proceedings to which the Attorney General is not a party.

25. Narco Freedom shall not participate as a provider in any government-funded healthcare program.

26. Upon the Trustee's completion of the obligations imposed by Paragraph 3 above, the State shall file a notice dismissing the Forfeiture Action, solely as to Narco Freedom. The Court will retain jurisdiction to enforce this Stipulation. Neither Narco Freedom nor the Trustee will assist, aid, or abet any violation of the Temporary Restraining Orders entered in the Forfeiture Action by any remaining defendant in this action.

27. This Stipulation shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

28. The Parties acknowledge that they have entered this Stipulation freely, voluntarily, and upon due deliberation, with the advice of counsel and without coercion or duress.

29. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles. The Parties consent to the jurisdiction of the Supreme Court of the State of New York, Bronx County, in any action to enforce or interpret this Agreement.

30. The Trustee, on behalf of Narco Freedom, agrees that it waives and shall not seek payment for any of the health care billings covered by this Stipulation from any individual health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

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

32. Any failure by the State to insist upon the strict performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Stipulation.

33. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties.

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

35. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Signatures delivered by electronic mail as “.pdf” attachments to emails shall constitute acceptable, binding signatures for purposes of this Stipulation.

36. The Effective Date of this Stipulation is the date upon which it is entered by the Court.

**WHEREFORE**, the Parties have read the foregoing Stipulation and accept and agree to the provisions contained herein and hereby have caused this Stipulation to be signed as of the day and date adjacent to their signature.

**AGREED TO BY:**

**THE STATE OF NEW YORK**  
ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York

For Narco Freedom

Chapter 7 Trustee

By: \_\_\_\_\_  
Alee N. Scott  
Special Assistant Attorney General  
Medicaid Fraud Control Unit  
Civil Enforcement Division  
120 Broadway, 13<sup>th</sup> Floor  
New York, NY 10271  
Telephone: (212) 417-5322  
Email: [Alee.scott@ag.ny.gov](mailto:Alee.scott@ag.ny.gov)

By: \_\_\_\_\_  
Alan Nisselson, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019  
Telephone: (212) 237-1021  
Email: [anisselson@windelsmarx.com](mailto:anisselson@windelsmarx.com)

Dated: \_\_\_\_\_, 2017  
New York, New York

Dated: New York, New York  
\_\_\_\_\_, 2017

Counsel to the Trustee

By: \_\_\_\_\_

Howard L. Simon  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, NY 10019

Telephone: (212) 237-1094

Email: hsimon@windelsmarx.com

Dated: New York, New York  
\_\_\_\_\_, 2017

SO ORDERED:

\_\_\_\_\_, 2017

\_\_\_\_\_  
Honorable Wilma Guzman  
Justice of the Supreme Court