

SETTLEMENT AGREEMENT

I. Parties

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS), (collectively the "United States"), the State of Connecticut, acting through the Attorney General of the State of Connecticut (collectively the "State of Connecticut"); The Hartford Dispensary and The Hartford Dispensary Endowment Corporation (collectively, "Hartford Dispensary"); Paul McLaughlin (McLaughlin); and Russell Buchner and Charles Hatheway (Relators) (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

- A. The Hartford Dispensary is a Connecticut corporation with its principle place of business located at 335 Broad Street, Manchester, Connecticut. The Hartford Dispensary's sole corporate member is the HD Holding Corporation. The Hartford Dispensary Endowment Corporation's sole corporate member is also The HD Holding Corporation. Hartford Dispensary is a healthcare organization that provides behavioral health and substance use disorder treatment services to patients. It operates various outpatient treatment programs through its nine (9) clinics in Connecticut.
- B. McLaughlin is the former President and Chief Executive Officer of Hartford Dispensary.
- C. On April 18, 2014, Relators filed a *qui tam* action in the United States District Court for the District of Connecticut captioned *United States ex rel. Russell Buchner and Charles Hatheway v. The Hartford Dispensary, Inc. and The Hartford Dispensary Endowment*

Corporation, 3:14cv493 (JAM), pursuant to the *qui tam* provisions of the federal False Claims Act, 31 U.S.C. § 3730(b) and the Connecticut state False Claims Act, Conn. Gen. Stat. §4-277 (the Civil Action). The United States and the State of Connecticut will timely intervene in the Civil Action.

D. The United States and the State of Connecticut contend that Hartford Dispensary and McLaughlin submitted or caused to be submitted claims for payment to the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w 5 (“Medicaid”).

E. The United States and the State of Connecticut contend that they have certain civil claims against Hartford Dispensary and McLaughlin arising out of Hartford Dispensary and McLaughlin’s repeated false representations and certifications to federal and state authorities that Hartford Dispensary had a Medical Director, as defined by 42 C.F.R. § 8.2, who was performing the duties and responsibilities required by federal and state law; and that these false representations and certifications were material to false or fraudulent claims submitted to the Medicaid program during the time period January 1, 2009 through November 20, 2015. That conduct is referred to below as the Covered Conduct.

F. Hartford Dispensary and McLaughlin deny the United States’ and the State of Connecticut’s allegations in Paragraph E.

G. This Settlement Agreement is neither an admission of liability by Hartford Dispensary and McLaughlin nor a concession by the United States or the State of Connecticut that their claims are not well founded.

H. Relators claim entitlement under 31 U.S.C. § 3730(d) and Conn. Gen. Stat. §4-278(e) to a share of the proceeds of this Settlement Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Hartford Dispensary and McLaughlin shall pay to the United States and the State of Connecticut the sum of Six Hundred Twenty Seven Thousand Dollars (\$627,000.00) ("Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by The Office of the United States Attorney for the District of Connecticut, no later than the Effective Date of this Settlement Agreement.

2. Conditioned upon the United States and the State of Connecticut receiving the Settlement Amount from Hartford Dispensary and McLaughlin and as soon as feasible after receipt, the United States and the State of Connecticut shall pay One Hundred and Twelve Thousand Eight-Hundred Sixty Dollars (\$112,860.00) to Relators' counsel by electronic funds transfer.

3. Relators and Hartford Dispensary have separately agreed on the amount of full and complete payment of Relators' attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d) incurred in connection with the Civil Action. Payment shall be made within five (5) days of the Effective Date of this Agreement via electronic transfer to a trust account for Relators, through their counsel, Youman & Caputo, LLC, and Joseph Trautwein & Associates, LLC, in accordance

with written instructions to be provided by Relators' counsel. No additional attorneys' fees or costs shall be paid or claimed by Relators or their counsel in connection with the Civil Action.

4. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon Hartford Dispensary and McLaughlin's full payment of the Settlement Amount, the United States releases Hartford Dispensary and McLaughlin from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon Hartford Dispensary and McLaughlin's full payment of the Settlement Amount, the State of Connecticut releases Hartford Dispensary and McLaughlin from any civil claims the State of Connecticut has, or could have asserted for the Covered Conduct under, Conn. Gen. Stat. §4-274 et seq. (Connecticut state False Claims Act), and the common law theories of payment by mistake, unjust enrichment, and fraud.

6. Subject to the exceptions in Paragraph 8 below, and conditioned upon Hartford Dispensary and McLaughlin's full payment of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Hartford Dispensary and McLaughlin from any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the federal False Claims Act, 31 U.S.C. §§ 3729-3733, and on behalf of the State of Connecticut for the Covered Conduct under the Connecticut state False Claims Act, Conn. Gen. Stat. §§4-274 – 4-289.

7. Hartford Dispensary (together with its current or former direct or indirect parent corporations; direct or indirect subsidiaries; direct or indirect brother or sister corporations; divisions; owners; and officers, directors, employees and affiliates; and the successors and assignees of any of them) and McLaughlin fully and finally release, waive, and discharge Relators and their respective heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that they could have asserted, or may assert in the future against Relators and their respective heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, related to the Covered Conduct and Relators' and the United States' and the State of Connecticut's investigations and prosecution concerning the Civil Action.

8. Notwithstanding the releases given in Paragraphs 4, 5, and 6 of this Settlement Agreement, or any other term of this Settlement Agreement, the following claims of the United States and the State of Connecticut are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any liability arising under the laws and regulations that are administered and enforced by the State of Connecticut Department of Revenue Services;
- c. Any criminal liability;
- d. Except as explicitly stated in this Settlement Agreement, 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 not expressly covered by the releases in Paragraphs 4 & 5 above, including, but not limited to, any and all of the following claims:

(i) State or federal antitrust violations; (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

- e. Except as explicitly stated in this Settlement Agreement, any administrative liability to the United States, including mandatory and permissive exclusion from Federal health care programs;
- f. Except as explicitly stated in this Settlement Agreement, any administrative liability to the State of Connecticut Department of Social Services, including suspension from the Connecticut Medical Assistance Program (CMAP);
- g. Any liability to the United States or the State of Connecticut (or their agencies) for any conduct other than the Covered Conduct;
- h. Any liability based upon obligations created by this Settlement Agreement;
- i. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- j. Any liability for failure to deliver goods or services due;
- k. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

9. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Settlement Agreement but agree and confirm that this Settlement Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and Conn. Gen. Stat. §4-278(c). Conditioned upon Relators' receipt of the payment described in Paragraph 2, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, the State of Connecticut, their agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730 and Conn. Gen. Stat. §§4-274 – 4-289, and from any claims to a share of the proceeds of this Settlement Agreement and/or the Civil Action.

10. Conditioned upon Relators' timely receipt of the payment described in Paragraph 3, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Hartford Dispensary and McLaughlin, and their officers, agents, and employees, from any further liability to Relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) and Conn. Gen. Stat. §4-278(e) for expenses or attorney's fees and costs.

11. Hartford Dispensary and McLaughlin waive and shall not assert any defenses Hartford Dispensary and McLaughlin may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Settlement Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the

Internal Revenue laws, Title 26 of the United States Code. Nothing in this paragraph or any other provision of this Settlement Agreement constitutes an agreement by the State of Connecticut concerning the characterization of the Settlement Amount for the purposes of the laws and regulations administered and enforced by the Connecticut Department of Revenue Services.

12. Hartford Dispensary and McLaughlin fully and finally release the United States, the State of Connecticut, and their respective agencies, employees, servants, and agents from any claims in their official and individual capacities (including attorney's fees, costs, and expenses of every kind and however denominated) that Hartford Dispensary and McLaughlin have asserted, could have asserted, or may assert in the future against the United States, the State of Connecticut, their respective agencies, employees, servants, and agents, related to the Covered Conduct and the United States' and the State of Connecticut's investigation and prosecution thereof.

13. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier), or any state payer, related to the Covered Conduct; and Hartford Dispensary and McLaughlin agree not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

14. Hartford Dispensary and McLaughlin agree to the following, if applicable:

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 Hartford Dispensary and McLaughlin, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Settlement Agreement;
- (2) the United States' and the State of Connecticut's audit(s) and civil investigation(s) of the matters covered by this Settlement Agreement;
- (3) Hartford Dispensary and McLaughlin's investigation, defense, and corrective actions undertaken in response to the United States' and the State of Connecticut's audit(s) and civil investigation(s) in connection with the matters covered by this Settlement Agreement (including attorney's fees);
- (4) the negotiation and performance of this Settlement Agreement; and
- (5) the payment Hartford Dispensary and McLaughlin make to the United States and the State of Connecticut pursuant to this Settlement Agreement

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

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Hartford Dispensary and McLaughlin and Hartford Dispensary

and McLaughlin shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or the State of Connecticut, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Hartford Dispensary and McLaughlin or any of their subsidiaries or affiliates to the Medicare, Medicaid, ConnPACE, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Hartford Dispensary and McLaughlin further agree that within 90 days of the Effective Date of this Settlement Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, ConnPACE and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Hartford Dispensary and McLaughlin or any of their 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. Hartford Dispensary and McLaughlin agree that the United States and the State of Connecticut, at a minimum, shall be entitled to recoup from Hartford Dispensary and McLaughlin any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States and/or the State of Connecticut pursuant to the direction of the Department of Justice or

the Connecticut Attorney General's Office, respectively, and/or the affected agencies. The United States and the State of Connecticut reserve their rights to disagree with any calculations submitted by Hartford Dispensary and McLaughlin or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Hartford Dispensary and McLaughlin or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Settlement Agreement shall constitute a waiver of the rights of the United States and/or the State of Connecticut to audit, examine, or re-examine Hartford Dispensary or McLaughlin's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. This Settlement Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 16 (waiver for beneficiaries paragraph), below.

16. Hartford Dispensary and McLaughlin agree that they waive and shall not seek payment for any of the health care billings covered by this Settlement Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

17. Upon receipt of the payment described in Paragraph 1, above, the United States, the State of Connecticut, and the Relators shall promptly sign and file in the Civil Action a Notice of Voluntary Dismissal of the Civil Action pursuant to Rule 41(a)(1).

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

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

20. This Settlement Agreement is governed by the laws of the United States and the State of Connecticut. The exclusive jurisdiction and venue for any dispute relating to this Settlement Agreement is the United States District Court for the District of Connecticut, except that disputes only between the State of Connecticut and Hartford Dispensary and McLaughlin will be resolved in Superior Court for the Judicial District of Hartford, Connecticut. For purposes of construing this Settlement Agreement, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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

24. This Settlement Agreement is binding on Hartford Dispensary and McLaughlin's successors, transferees, heirs, and assigns.

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

26. All parties consent to the United States' and the State of Connecticut's disclosure of this Settlement Agreement, and information about this Settlement Agreement, to the public.

27. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement (Effective Date of this Settlement Agreement).

Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

THE UNITED STATES OF AMERICA

DATED: 7/26/17

BY: John B. Hughes
JOHN B. HUGHES
Assistant United States Attorney
Chief, Civil Division
District of Connecticut

DATED: 7/26/17

By: R. M. Molot
RICHARD M. MOLOT
Assistant United States Attorney
District of Connecticut

DATED: 07/26/17

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

THE STATE OF CONNECTICUT

GEORGE JEPSEN
ATTORNEY GENERAL

DATED: 7/12/17

BY: 

MICHAEL E. COLE
Chief, Antitrust and Government Program Fraud Department
GREGORY O'CONNELL
Assistant Attorney General
State of Connecticut

RELATORS

DATED: 7/12/17

BY:


RUSSELL BUCHNER
Relator

DATED: 7/12/17

BY:


CHARLES HATHEWAY
Relator


DATED: 7/12/17

BY:


JOSEPH TRAUTWEIN, ESQ.
Joseph Trautwein & Associates, LLC
Counsel for Relators

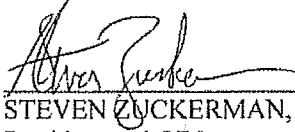
DATED: 7/12/17

BY:

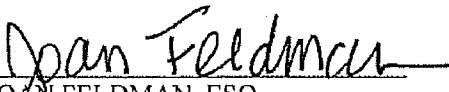

DAVID J. CAPUTO, ESQ.
Youman & Caputo, LLC
Counsel for Relators

THE HARTFORD DISPENSARY

DATED: 7/11/17

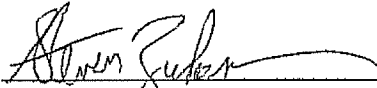
BY: 
STEVEN ZUCKERMAN, MA, LPC
President and CEO
The Hartford Dispensary

DATED: 7/11/17

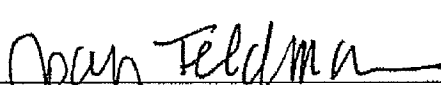
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ROSS GARBER, ESQ.
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Shipman & Goodwin, LLP
Counsel for The Hartford Dispensary

THE HARTFORD DISPENSARY ENDOWMENT CORPORATION.

DATED: 7/11/17

BY: 
STEVEN ZUCKERMAN, MA, LPC
President and CEO
The Hartford Dispensary Endowment Corporation

DATED: 7/11/17

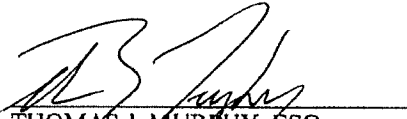
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Counsel for The Hartford Dispensary Endowment Corporation

PAUL McLAUGHLIN

DATED: 7/13/17

BY: 
PAUL McLAUGHLIN

DATED: 7/13/17

BY: 
THOMAS J. MURPHY, ESQ.
Cowdery & Murphy, LLC
Counsel for Paul McLaughlin