

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the State of California, acting through the California Department of Justice, Office of the Attorney General, Division of Medi-Cal Fraud and Elder Abuse (“California”); Defendants Hey Favor, Inc., FVR Medical Group, Inc., MobiMeds, Inc., MedPro Pharmacy, LLC, The Pill Club Pharmacy Holdings, Inc. and their predecessor entities, The Pill Club Holdings, Inc., David Svec, M.D., Inc., and The Pill Club Medical Group, Inc., (collectively, “The Pill Club/Favor” or “Defendants”); Happy Baumann and Cindy Swintelski (collectively “Relators”) (hereinafter collectively referred to as “the Parties” and each is a “Party”), through their authorized representatives.

RECITALS

A. Defendant Hey Favor, Inc. is a privately held Delaware corporation headquartered in San Mateo, California, and the successor in interest to Defendant The Pill Club Holdings, Inc. These entities previously did business collectively as “The Pill Club,” currently do business as “Favor,” and are collectively referred to hereinafter as “The Pill Club/Favor.”

B. The Pill Club/Favor prescribes, fills, dispenses, and mails prescription contraceptives to patients in various states, including beneficiaries of California’s Medicaid program, Medi-Cal, and in turn submits claims for reimbursement for those services and receives reimbursement from Medi-Cal, among other payors.

C. On March 28, 2019, Relators filed a *qui tam* action in the Superior Court of California, County of Sacramento, captioned *The State of California, ex rel. Happy Baumann and Cindy Swintelski vs. The Pill Club Medical Group, Inc., et al.*, Case No. 34-2019-00253324, under the *qui tam* provisions of the California False Claims Act, California Government Code section 12652(c) (“Civil Action”). Relators alleged, *inter alia*, that The Pill Club/Favor

knowingly presented false claims to Medi-Cal for prescriptions that were written and dispensed in a manner that failed to comply with California law.

D. On April 11, 2022, California filed its Notice of Election to Intervene in the above-captioned matter and sought and obtained an order extending the deadline to file its complaint-in-intervention.

E. California contends that it has certain civil claims against The Pill Club/Favor for claims it submitted or caused to be submitted for payment or reimbursement by Medi-Cal, in violation of the California False Claims Act, Government Code section 12650, *et seq.* Specifically, California alleges that from January 1, 2016 through October 20, 2022, The Pill Club/Favor knowingly submitted or caused to be submitted false claims to Medi-Cal and Medi-Cal managed care plans for services performed by The Pill Club/Favor by:

- (a) billing for female condoms in quantities in excess of medical necessity;
- (b) billing for emergency contraceptives in quantities in excess of medical necessity;
- (c) billing for asynchronous telemedicine medical visits improperly coded as synchronous visits; and
- (d) billing for prescriptions dispensed and sent to Medi-Cal beneficiaries by MedPro Pharmacy, LLC, a Texas pharmacy not then-licensed to provide pharmacy services to California patients.

The conduct alleged in this Paragraph E is referred to below as the “Covered Conduct.”

F. This Agreement is neither an admission of liability by The Pill Club/Favor nor a concession by California that its claims are not well founded.

G. Relators claim entitlement under Government Code section 12652(g) to a share of the proceeds of this Agreement and to Relators’ reasonable expenses, attorneys’ fees, and costs.

H. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the foregoing dispute, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Payment to California. Not later than ten (10) days after the Effective Date of this Agreement, The Pill Club/Favor shall pay California \$15,000,000, plus interest on that amount at a rate of 0.75 percent per year starting ten (10) calendar days from the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by California (the “Settlement Amount”). Of the Settlement Amount, \$11,024,911 constitutes restitution.

2. Conditioned upon California receiving the Settlement Amount, California shall pay to Relators their share of the Settlement Amount within a reasonable time after the appropriate Relators’ share is agreed to and a separate agreement is entered (“Relators’ Share”).

3. Relators and their counsel also have claims for their attorneys’ fees and costs incurred in the prosecution of the Civil Action (the “Fees Claim”) that are not released herein. The Pill Club/Favor shall pay to Relators’ counsel the reasonable costs and attorneys’ fees to date incurred in this matter.

4. Relators’ Release. Except for those rights created under this Agreement, and upon California’s receipt of the full Settlement Amount plus interest due under Paragraph 1, and upon the direct payment of agreed-upon statutory fees and costs to Relators’ counsel pursuant to California Government Code section 12652(g)(8), Relators, for themselves and their heirs, successors, attorneys, agents, transferees, and assigns, irrevocably and unconditionally waive, release, and forever discharge The Pill Club/Favor and its current or former heirs, successors,

attorneys, agents, transferees, members, officers, directors, commissioners, supervisors, employees, and assigns, from any and all charges, complaints, lawsuits, claims, liabilities, obligations, promises, agreements, controversies, injuries, damages, actions, cause of action, suits, rights, demands, judgments, claims for relief, indebtedness, costs, losses, debts and expenses, including attorneys' fees and costs actually incurred and owed under Paragraph 3, of any nature whatsoever, whether in law or in equity, known or unknown, suspected or unsuspected, actual or potential, in their individual capacity or on behalf of California, including without limitation, for claims arising from: (i) the filing of the Civil Action as to The Pill Club/Favor allegations; (ii) any California law, including California Government Code sections 12650-12656; and/or, (iii) under California Government Code section 12652(g) for expenses or attorneys' fees and costs as to The Pill Club/Favor allegations.

5. Relators' Waiver of Civil Code Section 1542. It is the intention of each Relator in executing this Agreement that it shall be effective as a full and final accord and satisfactory release of each and every matter specifically referred to herein and all claims and causes of action that each Relator on behalf of themselves, and each Relators' heirs, successors, attorneys, agents, transferees, and assigns, may have as to The Pill Club/Favor and/or its current or former heirs, successors, attorneys, agents, transferees, members, officers, directors, commissioners, supervisors, employees, and assigns. In furtherance of this intention, each Relator acknowledges that he or she is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

As to the claims and causes of actions that each Relator may have against The Pill Club/Favor each Relator waives and relinquishes any rights and benefits they may have under Section 1542 of the California Civil Code to the full extent that they may lawfully waive all such rights and benefits, subject to the exclusions set out in Paragraph 4.

6. California's Releases of The Pill Club/Favor. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon The Pill Club/Favor's full payment of the Settlement Amount, California releases The Pill Club/Favor and its current or former heirs, successors, attorneys, agents, transferees, members, officers, directors, commissioners, supervisors, employees, and assigns from any civil claim California has for the Covered Conduct under the California False Claims Act, Government Code sections 12650-12656. Upon full payment of the Settlement Amount, California will dismiss the Civil Action with prejudice, inclusive of all of Relators' claims asserted or that could have been asserted in the Civil Action.

7. Exceptions to California's Releases. Notwithstanding the releases given in this Agreement, or any other term of this Agreement, the following claims of California are specifically reserved and are not released:

- a. any liability to California (or its agencies) for any conduct other than the Covered Conduct, including, but not limited to, violations of the Insurance Frauds Prevention Act, California Insurance Code section 1871.7, or liability under California consumer protection statutes;
- b. any criminal liability;

- c. except as explicitly stated in this Agreement, any administrative liability, including permissive or mandatory exclusion from federal or state health care programs;
- d. any liability arising under California's Taxation and Revenue Code;
- e. any liability based upon obligations created by this Agreement;
- f. any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. any liability for failure to deliver goods or services due;
- h. any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- i. except as otherwise provided for in this Agreement, any liability of individuals.

8. The Pill Club/Favor's Release of California. The Pill Club/Favor fully and finally releases California and its respective agencies, officers, agents, employees, and servants from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that The Pill Club/Favor has asserted, could have asserted, or may assert in the future against California and its respective agencies, officers, agents, employees, and servants related to, or arising out of, the Covered Conduct, California's investigation of the Covered Conduct, and any ensuing civil prosecution. With regard to the release set forth in this Paragraph, The Pill Club/Favor hereby expressly waives all rights they may have by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR

SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

9. The Pill Club/Favor's Release of Relators. The Pill Club/Favor fully and finally release the Relators from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that The Pill Club/Favor have asserted, could have asserted, or may assert in the future against the Relators, related to the filing of the Civil Action and Relators' investigation and prosecution thereof.

10. Double Jeopardy and Excessive Fines Clauses. The Pill Club/Favor waives and shall not assert any defenses it 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 United States Constitution, the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, or under Article 1, Sections 15 and 24 of the California Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

11. Denial of Claims. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by Medi-Cal or by a Medi-Cal Managed Care Plan related to the Covered Conduct; and The Pill Club/Favor agrees not to resubmit to Medi-Cal or by a Medi-Cal Managed Care Plan any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims, and to withdraw any such pending appeals.

12. Benefit of the Parties. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity.

13. Waiver of Payment. The Pill Club/Favor agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

14. Joint Stipulation of Dismissal. Upon California's receipt of the full Settlement Amount plus interest due from The Pill Club/Favor under Paragraph 1, and Relators' receipt of their statutory fees and costs pursuant to California Government Code section 12652(g)(8) under paragraph 3, California and Relators shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 3.1385(b). The Relators' Complaint shall be dismissed: (a) with prejudice as to California as to the Covered Conduct and otherwise without prejudice; and (b) with prejudice as to the Relators except for claims to a share of the proceeds of this Agreement arising under Government Code section 12652(g).

15. Fees and Costs. Except as expressly provided to the contrary in Paragraph 3 this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Disclosure to Public. All Parties consent to California's disclosure of this Agreement, and information about this Agreement, to the public.

17. Agreement Drafted by All Parties. This Agreement shall be deemed to have been drafted by all Parties to this Agreement and therefore shall not be construed against any Party for reasons of drafting.

18. Voluntary Agreement. Each Party and signatory to this Agreement represents that it and she/he freely, voluntarily, knowingly, and deliberately enters into this Agreement without any degree of duress, compulsion, or misconduct by any of the Parties.

19. Governing Law. This Agreement is governed by the laws of the State of California. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the Superior Court of California, County of Sacramento. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

20. Complete Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and may not be modified, amended, or terminated except by a written agreement signed by the Parties specifically referring to this Agreement and its relevant portions. Each of the Parties acknowledges that, except as expressly set forth in this Agreement, no representations of any kind or character have been made by any other party or that party's agents, representatives, or attorneys to induce execution or delivery of this Agreement.

21. Headings. The headings in this Agreement are for convenience only, do not constitute a part of this Agreement, and shall not limit or affect any of its provisions.

22. Capacity to Execute. The undersigned counsel and representatives represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below. Each signatory represents that he or she has the full power, authority, and competence necessary to enter into this Agreement.

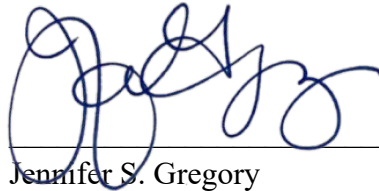
23. Counterparts and Facsimiles. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Facsimiles and electronic versions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

24. The Pill Club/Favor's Successors. This Agreement is binding on The Pill Club/Favor's successors, transferees, heirs, and assigns.

25. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimilies and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE STATE OF CALIFORNIA

ROB BONTA
Attorney General for the State of California



DATED: 1/18/2023

BY: _____

Jennifer S. Gregory
Deputy Attorney General
California Department of Justice
Office of the Attorney General
Division of Medi-Cal Fraud and Elder Abuse

RELATORS

DATED: _____

BY: _____

Cindy Swintelski

DATED: _____

BY: _____

Happy Baumann

24. The Pill Club/Favor's Successors. This Agreement is binding on The Pill Club/Favor's successors, transferees, heirs, and assigns.

25. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimilies and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE STATE OF CALIFORNIA

ROB BONTA
Attorney General for the State of California

DATED: _____

BY: _____


Jennifer S. Gregory
Deputy Attorney General
California Department of Justice
Office of the Attorney General
Division of Medi-Cal Fraud and Elder Abuse

RELATORS

DATED: 1/18/2023

BY:  aka

Cindy Swintelski


Cindy Schwartz

DATED: _____

BY: _____

Happy Baumann

24. The Pill Club/Favor's Successors. This Agreement is binding on The Pill Club/Favor's successors, transferees, heirs, and assigns.

25. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimilies and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE STATE OF CALIFORNIA

ROB BONTA
Attorney General for the State of California

DATED: _____

BY: _____

Jennifer S. Gregory
Deputy Attorney General
California Department of Justice
Office of the Attorney General
Division of Medi-Cal Fraud and Elder Abuse

RELATORS

DATED: _____

BY: _____

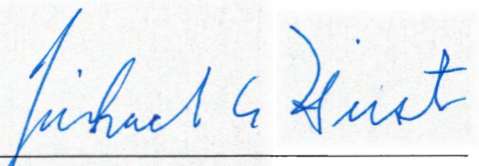
Cindy Swintelski

DATED: Jan 18, 2023

BY:  _____

Happy Baumann

DATED: 1/18/23

BY: 

ARNOLD LAW FIRM
M. Anderson Berry
HIRST LAW GROUP, P.C,
Michael A. Hirst
Counsel for Relators

THE PILL CLUB/FAVOR

DATED: _____

BY: _____

Elizabeth Meyerdirk
Chief Executive Officer
The Pill Club/Favor

DATED: _____

BY: _____

Amy Hargreaves
Latham & Watkins LLP
Counsel for The Pill Club/Favor

DATED: _____

BY: _____

ARNOLD LAW FIRM
M. Anderson Berry
HIRST LAW GROUP, P,C,
Michael A. Hirst
Counsel for Relators

THE PILL CLUB/FAVOR

DATED: January 18, 2023

BY: _____

DocuSigned by:
Elizabeth Meyerdirk
3F588B5BDD449...
Elizabeth Meyerdirk
Chief Executive Officer
The Pill Club/Favor

DATED: _____

BY: _____

Amy Hargreaves
Latham & Watkins LLP
Counsel for The Pill Club/Favor

DATED: _____

BY: _____

ARNOLD LAW FIRM
M. Anderson Berry
HIRST LAW GROUP, P,C,
Michael A. Hirst
Counsel for Relators

THE PILL CLUB/FAVOR


DATED: _____

BY: _____

Elizabeth Meyerdirk
Chief Executive Officer
The Pill Club/Favor

DATED: January 18, 2023

BY: _____

DocuSigned by:

995CB0206A724E7...
Amy Hargreaves
Latham & Watkins LLP
Counsel for The Pill Club/Favor