

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting by and 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"), the Office of Personnel Management ("OPM"), which administers the Federal Employee Health Benefits Program ("FEHBP"), and TRICARE Management Activity ("TMA"), formerly known as the Office of the Civilian Health and Medical Program of the Uniformed Services ("OCHAMPUS"), which administers the TRICARE program (collectively the "United States"); and Wal-Mart Stores, Inc. ("Wal-Mart"). Collectively, all of the above will be referred to as "the Parties."

I. PREAMBLE

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

1. Wal-Mart is an international retail merchandising company operating retail pharmacies in forty-nine states in the United States.
2. Wal-Mart submitted or caused to be submitted prescription claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396v, in Alaska, Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, Nebraska, New Hampshire, New Jersey, New Mexico, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Vermont, Washington, Wisconsin, West Virginia, and Wyoming (hereinafter

referred to as the "States"). Wal-Mart also submitted or caused to be submitted prescription claims for payment to FEHBP, 5 U.S.C. §§ 8901-8914, and TRICARE, 10 U.S.C. §§ 1071-1109.

3. On September 27, 1996, Marion Tucker Altman, Jr. ("Relator"), in his individual capacity and as a relator on behalf of the United States, filed an amended complaint, under seal, in the United States District Court for the District of South Carolina, under the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730. That *qui tam* suit is captioned United States ex rel. Altman v. [Defendants], and docketed as Case No. 2 96 1005 2 (D.S.C.)(Under Seal)("Lawsuit"). The Relator alleges in the Lawsuit that Wal-Mart violated the False Claims Act by billing the United States for partially-filled prescriptions as if they were full prescriptions when only partially-filled prescriptions were dispensed, with the undispensed portion of the prescriptions being re-stocked into inventory without credit to the United States. The United States contends that it has claims for damages and penalties for Wal-Mart's alleged false billing of partially-filled prescriptions to the Medicaid, FEHBP, and TMA programs between January 1, 1990 and December 31, 2000 under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines. The conduct specified above in this paragraph is hereinafter referred to as the "Covered Conduct."
4. The United States also contends that it has certain administrative claims against Wal-Mart for the Covered Conduct under the provisions for permissive exclusion from the Medicaid and other federal health care programs, 42 U.S.C. §1320a-7(b), the provisions for civil monetary penalties, 42 U.S.C. §1320a-7a, the provisions for exclusion from

TRICARE, 32 C.F.R. §199.9, and the provisions for exclusion from FEHBP, 5 U.S.C. §8902a and 5 C.F.R. Part 970.

5. Wal-Mart, denies the allegations that are set forth in Paragraph 3 above, and denies that it is liable under the False Claims Act, 31 U.S.C. §§ 3729-3733, or any other federal or state law or regulation, civil, administrative or criminal cause of action, for the knowing submission of claims to the Medicaid, FEHBP and TRICARE programs for partially-filled prescriptions that were billed as if they were full prescriptions.
6. In order to avoid the disruption, delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties have agreed to a full and final settlement as set forth below.

II. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

A. OBLIGATIONS OF WAL-MART

7. Payment to the United States: Wal-Mart agrees to pay \$2,866,904 (“Settlement Amount”) to the United States and Participating States within seven business days of execution of this Agreement. The United States, in consultation with the States who will be executing separate agreements with Wal-Mart concerning the Covered Conduct, has determined the distribution of the Settlement Amount to the United States, States, and other parties.
8. Manner and Method of Payment: The payment provided for in Paragraph 7 above shall be by electronic transfer pursuant to instructions provided by the United States.

9. Integrity Agreement: Wal-Mart has entered into a Corporate Integrity Agreement ("CIA") with the OIG-HHS. That CIA is incorporated into this Agreement by reference. Consistent with the terms of the CIA, Wal-Mart will, upon execution of the CIA, implement its obligations thereunder.

B. OBLIGATIONS OF THE UNITED STATES

10. In consideration of the obligations of Wal-Mart under this Settlement Agreement and subject to the exceptions from release (Paragraph 14), and conditioned upon payment in full of the Settlement Amount, the United States shall release and forever discharge Wal-Mart, its officers, directors, employees and agents from any civil or administrative monetary claims that the United States has or may have 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; the common law theories of unjust enrichment, payment by mistake, fraud, and breach of contract for the Covered Conduct.
11. In consideration of the obligations of Wal-Mart set forth in this Agreement and the CIA, and conditioned upon Wal-Mart's payment in full of the Settlement Amount, OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320b-7(f)) against Wal-Mart under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7)(permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 14 below, and as reserved in this Paragraph. OIG-HHS expressly

reserves all rights to comply with any statutory obligations to exclude Wal-Mart from the Medicare, Medicaid or other Federal health care programs under 42 U.S.C. § 1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 14 below.

12. In consideration of the obligations of Wal-Mart set forth in this Agreement and conditioned upon Wal-Mart's payment in full of the Settlement Amount, TMA agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion, suspension or termination from the TMA programs against Wal-Mart, its officers, directors, employees, and agents under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 14 below, and as reserved in this Paragraph. TMA expressly reserves authority to exclude Wal-Mart, its officers, directors, employees and agents from the TMA program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii), based upon the Covered Conduct. Nothing in this Paragraph precludes TMA from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 14 below.
13. In consideration of the obligations of Wal-Mart set forth in this Agreement and conditioned upon Wal-Mart's payment in full of the Settlement Amount, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the FEHBP program against Wal-Mart under 5 U.S.C. § 8902a or 5 C.F.R. Part 970 for the Covered Conduct, except as reserved in Paragraph 14 and except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). Nothing

in this Paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 14 below.

14. Specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Wal-Mart) are any and all of the following:
- a. Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
 - b. Any criminal liability;
 - c. Except as explicitly released in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
 - d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; or
 - e. Any claims based upon such obligations as are created by this Agreement.

C. MISCELLANEOUS PROVISIONS

15. The United States and Wal-Mart agree that the amount that Wal-Mart has agreed to pay under the terms of this Agreement constitutes a compromise of the claims set forth in Paragraph 10 for the Covered Conduct and is not punitive in effect or nature for purposes of such criminal prosecution or administrative action and does not constitute a criminal penalty or fine. Nothing in this paragraph or any provision in this Agreement constitutes a characterization of the Settlement Amount for purposes of the Internal Revenue Code, Title 26, U.S. Code.
16. Wal-Mart fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Wal-Mart has asserted, could have asserted, or may

assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

17. The Settlement Amount that Wal-Mart must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph II (A) above will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare, Medicaid, TMA, or FEHBP carrier or intermediary or any State payer, related to the Covered Conduct; and Wal-Mart agrees not to resubmit to any Medicare, Medicaid, TMA, or FEHBP carrier or intermediary or any State Payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.
18. Unallowable Costs: Wal-Mart agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") §31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations promulgated thereunder) incurred by or on behalf of Wal-Mart, in connection with:
 - a. the matters covered by this Agreement;
 - b. the United States' investigation of the matters covered by this Agreement;
 - c. Wal-Mart's investigation, defense, and corrective actions undertaken in response to the United States' investigation in connection with the matters covered by this Agreement (including attorney's fees and the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Settlement Agreement);
 - d. the negotiation of this Agreement and the CIA; and
 - e. the payment made pursuant to this Agreementare unallowable costs on Government contracts and under Medicare, Medicaid, TMA, the Veterans Affairs Program ("VA") and FEHBP (hereafter, "unallowable costs").

19. Wal-Mart will 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 Wal-Mart to the Medicare, Medicaid, TMA, VA or FEHBP programs.
20. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any person or entity except those identified in paragraphs II(B)(10)-(13).
21. Wal-Mart agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Wal-Mart waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.
22. The United States and Wal-Mart will bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement. Wal-Mart represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
23. This Agreement is governed by the laws of the United States. The Parties agree that, should any action to enforce or interpret this Agreement, or to resolve any dispute hereunder be required, the Parties acknowledge exclusive jurisdiction of the federal courts and agree that venue for any such action shall be the United States District Court for South Carolina except that disputes arising under the CIA incorporated herein by reference shall be resolved exclusively under the provisions set forth in the CIA.

24. This Agreement and the CIA which is incorporated herein by reference constitute the complete agreement between the United States and Wal-Mart. This Agreement may not be amended except by written consent of the Parties except that only Wal-Mart and OIG-HHS must agree in writing to modification of the CIA without the need to seek or obtain the consent of any other party.
25. A separate agreement between the United States, Wal-Mart, and the Relator entitled the "Relator Agreement," shall set forth the rights and responsibilities of the United States, Wal-Mart, and Relator concerning the resolution of the allegations against Wal-Mart in United States ex rel. Altman vs. [Defendants] and docketed as Case No. 2 96 1005 2 (D.S.C.)(Under Seal).
26. The undersigned individuals signing this Agreement on behalf of Wal-Mart represent and warrant that they are authorized to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.
27. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.
28. The Parties agree that they will execute and deliver all such other documents and instruments as may be necessary and appropriate to effectuate the terms of the Settlement Agreement.
29. This Agreement is effective on the date of signature of the last signatory to the Agreement, and is binding on successors, and transferees, heirs and assigns.
30. All parties consent to the United States' disclosure of this Agreement and information

about this Agreement to the public.

UNITED STATES OF AMERICA

DATE

ALLIE PANG
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

DATE

LARRY J. GOLDBERG
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health & Human Services

DATE

LAUREL C. GILLESPIE
Deputy General Counsel
TRICARE Management Activity
U.S. Department of Defense

DATE

FRANK TITUS

Assistant Director for Insurance Services
U.S. Office of Personnel Management

DATE

E. JEREMY HUTTON

Assistant Inspector General for Legal Affairs
U.S. Office of Personnel Management

WAL-MART STORES, INC.

DATE

[OFFICER OF WAL-MART]

DATE

KATHLEEN E. KARELIS
Miller & Chevalier
Attorney for Wal-Mart Stores, Inc.