



SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into by the California Department of Insurance by and through the California Insurance Commissioner, Ricardo Lara (the “Commissioner”), in his capacity as California Insurance Commissioner; Relators Happy Baumann and Cindy Swintelski (“Relators”); and FVR Medical Group, Inc., Hey Favor, Inc., MobiMeds, Inc., and MedPro Pharmacy, LLC and their predecessor entities, The Pill Club Holdings, Inc., David Svec, M.D., Inc., and The Pill Club Medical Group, Inc. (“The Pill Club/Favor”); (the Commissioner, Relators, and The Pill Club/Favor hereinafter collectively referred to as “the Parties” and each is a “Party”).

I. RECITALS

A. FVR Medical Group, Inc., formerly known as The Pill Club Medical Group, Inc., is a California corporation. At all relevant times, FVR Medical Group, Inc. provided medical services to California patients related to prescription contraceptives.

B. Hey Favor, Inc., formerly known as The Pill Club Holdings Company, Inc., is a Delaware corporation headquartered in California. At all relevant times, Hey Favor, Inc. provided management services to FVR Medical Group, Inc., MobiMeds, Inc., and MedPro Pharmacy, LLC.

C. MobiMeds, Inc. is a Delaware corporation headquartered in California. At all relevant times, MobiMeds, Inc. operated a pharmacy which filled, dispensed, and shipped prescription and devices to California patients.

D. MedPro Pharmacy, LLC doing business as TPC Pharmacy is a Texas corporation headquartered in Texas. At all relevant times, MedPro Pharmacy, LLC operated a pharmacy which filled, dispensed, and shipped prescription medications and medical devices to California patients.

[REDACTED]

E. On March 28, 2019, Relators filed a *qui tam* action in Sacramento County Superior Court captioned *The State of California ex rel. Happy Baumann and Cindy Swintelski v. The Pill Club Medical Group, Inc., et al.*, Case No. 34-2019-00253324, alleging claims for violations of the Insurance Frauds Prevention Act (“IFPA”), California Insurance Code section 1871.7 (the “Action”).

F. The Commissioner contends that The Pill Club/Favor submitted or caused to be submitted claims for payment to private insurers in the State of California in violation of the IFPA (“the IFPA Claims.”).

G. Relators claim entitlement under California Insurance Code section 1871.7(g)(1)(A) to a share of the proceeds of this Agreement.

H. The Commissioner contends that he has certain IFPA Claims against The Pill Club/Favor for engaging in the following conduct during the period of December 1, 2016 through November 14, 2022 (collectively, the “Covered Conduct”):

i. The Commissioner contends that The Pill Club/Favor submitted and caused to be submitted false claims for reimbursement to California commercial insurers for telehealth services. The Commissioner contends that The Pill Club/Favor’s submission of claims for reimbursement for alleged telehealth services were false and fraudulent as The Pill Club/Favor engaged in the following: (1) used CPT billing codes that represented that an in-person patient visit occurred when The Pill Club/Favor’s service were performed via asynchronous telehealth, (2) used CPT billing codes that inaccurately reflected the amount of time providers spent with patients, and (3) used place of service modifiers that indicated that the patient visit occurred in-person at a healthcare provider’s office.

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ii. The Commissioner further contends that The Pill Club/Favor submitted and caused to be submitted false claims for reimbursement to California commercial insurers for prescriptions for FC2 female condoms. The Commissioner contends that The Pill Club/Favor's writing prescriptions for FC2 female condoms and subsequent dispensing of FC2 female condoms from The Pill Club/Favor's pharmacies were false and fraudulent because they were not medically necessary for certain patients or prescribed in excess of medical necessity.

I. This Settlement Agreement is neither an admission of liability by The Pill Club/Favor nor a concession by the Commissioner that his claims are not well-founded. The Pill Club/Favor expressly denies any and all allegations asserted by the Commissioner in the Action and denies that it has any liability relating to the Covered Conduct, but nevertheless wishes to compromise, settle, resolve, and conclude any alleged causes of action. The Pill Club/Favor maintains that it has defenses to the Commissioner's claims, and denies that it has engaged in any wrongful conduct with respect to the Covered Conduct. Neither this Agreement, nor its execution, including payment, nor the fact of settlement, is intended to be, or shall be understood as, an admission by The Pill Club/Favor of liability or wrongdoing or other expression reflecting upon the merits of the dispute.

II. TERMS AND CONDITIONS

1. The Pill Club/Favor shall pay to the Commissioner the sum of \$3,275,000.00 (the "Settlement Amount") in full and final settlement and discharge of claims brought in the Action, and those which could have been brought in the Action. Such payment shall be made on the same date that The Pill Club/Favor remits settlement payment to the California Attorney General's

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Office, but in no event later than ten (10) days from the Effective Date of this agreement, and pursuant to written instructions to be provided by the Commissioner.

2. The Pill Club/Favor shall have no responsibility for the allocation, if any, of the Settlement Amount between the Commissioner and any other individual or entity, including the Relators, or their respective attorneys, after paying the Settlement Amount in full.

3. Subject to the exceptions in Paragraph 5 below, and conditioned upon The Pill Club/Favor's full payment of the Settlement Amount, Ricardo Lara in his capacity as Insurance Commissioner for the State of California, for himself, and for the California Department of Insurance (the "CDI Entities"), hereby releases, discharges, and covenants not to sue The Pill Club/Favor, together with its current and former directors officers, employees, members, commissioners, supervisors, shareholders, parents, partners, agents, transferees, predecessors in interest, successors in interest, heirs, subsidiaries, affiliates, and assigns with respect to any and all civil claims the CDI Entities have or may have related to the Covered Conduct under any law or legal or equitable theory, including but not limited to the IFPA. This release does not apply to claims arising from conduct after the date of this Settlement Agreement, including, but not limited to, claims arising out of breach or performance of this Settlement Agreement.

4. Notwithstanding the releases given in any other paragraph of this Agreement, or any other terms of this Agreement, claims under the California False Claims Act are specifically reserved and not released by the Commissioner.

5. Conditioned upon The Pill Club/Favor's payment in full of the Settlement Amount set forth in Paragraph 1 , Relators, for themselves and for their respective heirs, successors, attorneys, agents, and assigns, hereby fully and finally release, acquit, covenant not to sue, and forever discharge The Pill Club/Favor, together with its current and former directors, officers,

[REDACTED]

employees, members, commissioners, supervisors, shareholders, parents, partners, agents, transferees, predecessors in interest, successors in interest, heirs, subsidiaries, affiliates, and assigns, for all time and to the fullest extent allowed by law, with respect to any and all civil claims Relators have or may have related to the Covered Conduct under law or legal or equitable theory, including but not limited to the IFPA. This release does not apply to claims arising from conduct after the date of this Settlement Agreement, including, but not limited to, claims arising out of breach or performance of this Settlement Agreement. The Parties agree that the Settlement Amount is inclusive of any and all attorneys' fees, costs and/or expenses recoverable by the CDI Entities pursuant to California Insurance Code section 1871.7 or any other rule, regulation, or statute. Nothing in this Agreement shall be construed to preclude any claims (1) for Relators' attorney's fees, expenses, and costs pursuant to the California False Claims Act (Cal. Gov't Code. §§ 12650 *et seq.*), (2) for a recovery of a Relator's share of any recovery under the California False Claims Act (Cal. Gov't Code. §§ 12650 *et seq.*), (3) for Relator's attorney's fees, expenses, and costs pursuant to the Insurance Frauds Prevention Act (Cal. Ins. Code §§ 1871.7 *et seq.*), and (4) for a recovery of a Relator's share of any recovery under the Insurance Frauds Prevention Act (Cal. Ins. Code §§ 1871.7 *et seq.*) (collectively referred to as "Relators' Unreleased Claims").

6. All settlement negotiations and discussions, including but not limited to, all negotiations, discussions, communications, and correspondence between the Parties relating to the Settlement Amount and the methodology used to reach the Settlement Amount shall remain confidential and protected by Federal Rules of Evidence section 406 and California Evidence Code section 1152.

7. The Pill Club/Favor fully and finally releases, waives and discharges the CDI Entities for all time and to the fullest extent allowed by law, from any claims (including attorney's

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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 the CDI Entities related to the Covered Conduct and the CDI Entities' investigation and prosecution thereof. This release does not apply to claims arising from conduct after the date of this Settlement Agreement, including, but not limited to, claims arising out of breach or performance of this Settlement Agreement.

8. The Pill Club/Favor fully and finally releases Relators, and their respective heirs, successors, attorneys assigns and agents, from any claims for all time and to the fullest extent allowed by law, from any claims (including attorney's 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 the CDI Entities related to the Covered Conduct and the CDI Entities' investigation and prosecution thereof. This release does not apply to Relators' Unreleased Claims. Nor does this release apply to claims arising from the conduct after the Effective Date of this Settlement Agreement, including, but not limited to, claims arising out of breach or performance of this Settlement Agreement.

9. Each of the Parties has conducted their own due diligence regarding the respective Released Claims and all matters relating to the respective Released Claims. This Agreement is expressly intended to release known and unknown claims arising out of the CDI Entities' Released Claims and Relators' Released Claims respectively, and to the extent it applies, the Parties expressly waive application of Section 1542 of the Civil Code of the State of California, which provides as follows:

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

[REDACTED]

10. The agencies and officials of the State, including but not limited to the California Department of Insurance, shall have no liability for a breach, implied or actual, of this Agreement by The Pill Club/Favor or by the Relators, and/or their counsel, with respect to duties they may owe each other under this Agreement. In the event of a breach of this Agreement by either The Pill Club/Favor or Relators or their counsel to duties owed to each other under this Agreement, such breach will not affect the duties owed to the CDI Entities by The Pill Club/Favor and/or Relators under this Agreement.

11. The Pill Club/Favor shall have no liability for a breach, implied or actual, of this Agreement by the State or by Relators, and/or their counsel, with respect to duties they may owe each other under this Agreement. In the event of a breach of this Agreement by either The Pill Club/Favor or Relators or their counsel to duties owed to each other under this Agreement, such breach will not affect the duties owed to The Pill Club/Favor by the State and/or Relators under this Agreement.

12. Upon receipt of The Pill Club/Favor's payment of the Settlement Amount provided in Paragraph 1 of this Agreement, the Commissioner and Relators shall promptly sign and file dismissals as to The Pill Club/Favor in the Action. Such dismissals shall be with prejudice.

13. This Agreement constitutes the entire understanding and agreement among all of the Parties. This Agreement may not be amended except by written consent of the Parties.

14. The Parties to this Agreement agree that no particular Party shall be deemed to be the author of this Agreement or any particular term, provision or condition of this Agreement. The Parties further agree that any ambiguities in this Agreement shall be construed and interpreted without regard to which Party may have suggested, drafted, revised, or otherwise authorized this Agreement or any of its particular terms, provisions, or conditions. For purposes of construing this


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Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not be construed against any Party for that reason in any subsequent dispute.

15. Each Party to this Agreement represents and warrants that such Party has the full right and authority to execute this Agreement. The signatories for the Parties hereto represent and warrant that they have been granted specific authority by their respective principals to execute the Agreement on behalf of the Party. Where applicable, all corporate, partnership, or other organizational action necessary to authorize such execution has been taken and completed. The signatory of each Party to this Agreement has the full right and authority to commit and bind each respective Party to the fullest extent of the law. The undersigned California Department of Insurance signatory represents that she is signing this Agreement in her official capacity and that she is authorized to execute this Agreement on behalf of the California Department of Insurance.

16. The Parties acknowledge that they have obtained the advice of legal counsel before signing this Agreement. The Parties acknowledge that they made the decision to execute this Agreement freely and without any duress or coercion by a person, party or individual. The Parties acknowledge that, in entering into this Agreement, each of them has been fully advised by its/her own counsel of the meaning and effect of this Agreement, and expressly warrant that it/she has not relied on any statements, promises, interpretations, facts, or opinions, provided by any other Party or its/her counsel.

17. This Agreement is a settlement of disputed claims. By executing this Agreement, no Party admits any liability or fault in relation to the matters identified in or subject to this Agreement, and neither the execution of this Agreement nor the consideration therefor shall be construed as an admission as to the merits of any claim released herein.



18. In the event any portion of this Agreement is declared void by a court, such portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to substantially alter the Agreement or obligations of the Parties, in which case the Agreement may be immediately terminated.

19. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement, and each Party shall provide a copy of the signature page with the signature of its authorized representative to the other Parties.

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

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

22. This Agreement is effective on the date of the signature and transmittal to the other Parties of the last signatory to the Agreement (the "Effective Date" of the Agreement).

23. This Agreement is governed by the laws of California. The Parties further agree that the Court in this Action shall retain jurisdiction over the Parties to enforce this Agreement.


24. Facsimiles and scanned images of physical (as opposed to typed) signatures shall constitute acceptable, binding signatures for purposes of this Agreement.



IN WITNESS WHEREOF, the Parties have executed this Agreement as noted below.

THE CALIFORNIA DEPARTMENT OF INSURANCE

DATED: January 18, 2023

BY: 
HEATHER B. HOESTEREY
Acting Deputy General Counsel for Ricardo Lara in
his Capacity As Insurance Commissioner
for the California Department of Insurance



THE PILL CLUB/FAVOR

DATED: January 18, 2023

DocuSigned by:
Elizabeth Meyerdirk
BY: 3E58B8B5BDD0449
ELIZABETH MEYERDIRK
Chief Executive Officer
The Pill Club/Favor

DATED: _____

BY: _____
AMY HARGREAVES
Latham & Watkins LLP
Counsel for The Pill Club/Favor



THE PILL CLUB/FAVOR

DATED: _____

BY: _____

ELIZABETH MEYERDIRK
Chief Executive Officer
The Pill Club/Favor

DATED: January 18, 2023

DocuSigned by:
Amy Hargreaves
BY: _____
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AMY HARGREAVES
Latham & Watkins LLP
Counsel for The Pill Club/Favor



RELATORS

DATED: January 18, 2023

BY: 
HAPPY BAUMANN

DATED: _____

BY: _____
CINDY SWINTELSKI

DATED: _____

BY: _____
M. ANDERSON BERRY
The Arnold Law Firm
Counsel for Happy Baumann & Cindy Swintelski

DATED: _____

BY: _____
MICHAEL A. HIRST
Hirst Law Group, P.C.
Counsel for Happy Baumann & Cindy Swintelski




RELATORS

DATED: _____

BY: _____
HAPPY BAUMANN

DATED: 1/18/2023

BY:  aka
CINDY SWINTELSKI


Cindy Schwartz

DATED: _____

BY: _____
M. ANDERSON BERRY
The Arnold Law Firm
Counsel for Happy Baumann & Cindy Swintelski

DATED: _____

BY: _____
MICHAEL A. HIRST
Hirst Law Group, P.C.
Counsel for Happy Baumann & Cindy Swintelski



RELATORS


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HAPPY BAUMANN

DATED: _____

BY: _____
CINDY SWINTELSKI

DATED: 1/18/23

BY:  _____
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The Arnold Law Firm
Counsel for Happy Baumann & Cindy Swintelski

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BY: _____
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BY: _____
M. ANDERSON BERRY
The Arnold Law Firm
Counsel for Happy Baumann & Cindy Swintelski

DATED: 1/18/23

BY: Michael A. Hirst
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Counsel for Happy Baumann & Cindy Swintelski