

**SETTLEMENT AGREEMENT AND
AGREEMENT TO PARTIAL DEFAULT JUDGMENT**

THIS PARTIAL SETTLEMENT AGREEMENT is entered into this ____ day of August, 2018 (“Effective Date”) by and between by and between SMZX, Inc., d/b/a Bob’s Pharmacy, Sandra Marguez, and Daniel Zaretsky, respectively (hereinafter collectively referred to as “Bob’s Pharmacy”), represented by Angelo J. Cifaldi, Esq. of Wilentz, Goldman and Spitzer, PA and STATE OF NEW JERSEY, OFFICE OF THE STATE COMPTROLLER, MEDICAID FRAUD DIVISION (“MFD”). Bob’s Pharmacy and MFD are hereinafter collectively referred to as the "Parties" and each individually as a “Party.”

WHEREAS, MFD conducted a pharmacy inventory analysis and found that during the period of review between March 1, 2012, and March 31, 2016, Bob’s Pharmacy submitted a total of 4,359 claims totaling \$856,045.37 for pharmaceutical products provided to Medicaid patients that could not be supported by wholesaler invoices (the “Covered Conduct”); and

WHEREAS, MFD determined that, based on the Covered Conduct, Bob’s Pharmacy had received overpayments from the Medicaid Program in the amount of \$856,045.37; and

WHEREAS, the parties desire to amicably resolve the dispute between them giving rise to the Covered Conduct and have reached a mutually acceptable partial resolution of the controversies that exist between them; and

WHEREAS, Bob’s Pharmacy has asserted that it is not able to pay the full amount owed at one time or by a payment plan; and

WHEREAS, MFD has given Bob’s Pharmacy the opportunity to provide MFD with documentation supporting its claim that it cannot pay the full overpayment amount either at one time or by a payment plan; and

WHEREAS Bob's Pharmacy has declined to submit any documentation to MFD in support of its claim that it cannot pay the full overpayment amount either at one time or by a payment plan; and

WHEREAS, Bob's Pharmacy has Five Hundred Fifty Thousand Dollars (\$550,000) held in escrow with Wilentz, Goldman & Spitzer, PA; and

NOW THEREFORE, in consideration of the mutual promises contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to partially settle their dispute on the following terms:

(1) Bob's Pharmacy agrees to pay restitution to the Medicaid program in the sum of Five Hundred Fifty Thousand Dollars (\$550,000.00) within thirty (30) days of the execution of this Partial Settlement Agreement;

(2) Concurrent with the Parties' execution of this Partial Settlement Agreement, MFD will reduce the amount of overpayment owed by \$550,000 and reflect that by submitting a revised Certificate of Debt against Bob's Pharmacy in the amount of \$306,045.37 to the Superior Court of New Jersey for filing as a judgment in this matter. MFD will issue an Amended Notice of Claim in this matter amending the alleged outstanding overpayment amount to Three Hundred Six Thousand Forty Five Dollars and Thirty Seven Cents (\$306,045.37);

(3) Payment to MFD shall be by certified check, bank check, or attorney trust check made payable to "Treasurer, State of New Jersey," and shall be mailed or delivered as follows:

Attention: Processing Bureau
Treasurer, State of New Jersey
Division of Revenue
200 Woolverton Street, Building 20
Lockbox 656
Trenton, New Jersey 08646

Bob's Pharmacy will include "Bob's Pharmacy – OSC-MFD" and "[REDACTED]" in the memo line so that it is properly credited.

(4) If the payment arrangement as provided for in this Partial Settlement Agreement is more than ten (10) days late, Bob's Pharmacy will be in default of this Partial Settlement Agreement and the total unpaid balance, \$856,045.37, plus interest, will immediately become due and collected through any means available to MFD as provided by law.

(5) The parties agree that this Partial Settlement Agreement is intended to be without prejudice to all remaining claims, rights and remedies against Bob's Pharmacy, and is without prejudice to any defenses that Bob's Pharmacy, its officers, directors, successors or assigns may raise with respect to claims of any nature that may be raised by MFD or any other state or federal agency.

(6) Nothing in this Partial Settlement Agreement waives the rights of any other state or federal agency, including, among others, the New Jersey Division of Criminal Justice, from continuing with a pending or beginning a future civil or criminal investigation or other action for alleged conduct concerning Bob's Pharmacy or from taking any action for such conduct. Nothing in this Partial Settlement Agreement waives the rights of MFD to conduct an audit or investigation of prior or future years for the improper submission of any claims or conduct not specifically covered by this agreement, and to take any action civilly or criminally for such conduct.

(7) The terms of this Partial Settlement Agreement may be modified only by a subsequent written agreement signed by all Parties.

(8) Subject to the express terms of this Partial Settlement Agreement as provided for in paragraphs 1-7 above, by the signatures set forth below, the authorization of which is hereby affirmed, Bob's Pharmacy and MFD agree to the following Release: in consideration of the provision hereof including this release, each party agrees to release the other party and its representatives from liability, obligations or damages arising out of the Covered Conduct limited to Five Hundred and Fifty Thousand Dollars (\$550,000.00) and agrees that the parties are not released from liability, obligations or damages arising out of the Covered Conduct in the amount of Three Hundred Six Thousand Forty Five Dollars and Thirty Seven Cents (\$306,045.37).

(9) Nothing herein shall constitute an admission, concession or finding of wrongdoing or liability by any party.

(10) This Partial Settlement Agreement shall be construed, enforced and governed by the laws of the State of New Jersey.

(11) This Partial Settlement Agreement may be executed in Counterparts.


(12) This Partial Settlement Agreement is effective upon the last date it is executed by the parties hereto.

(13) This Partial Settlement Agreement sets forth the preliminary agreement between and among the parties hereto with respect to the claims described herein and supersedes any other written or oral understandings, and does not extinguish MFD's claim against Bob's Pharmacy for the remainder of the alleged remaining overpayment. This Partial Settlement Agreement does not reflect any other terms or conditions or agreements between or among the parties with respect to any other matter.

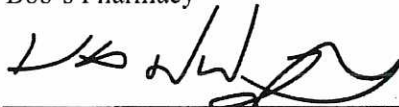
IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto on the following page have executed the foregoing Partial Settlement Agreement:

FORM AND CONTENT ACCEPTED AND AGREED TO BY:

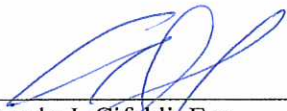
DATE:

By: 
Sandra Marquez, Owner
Bob's Pharmacy

DATE:


By: 
Daniel Zaretsky, Owner
Bob's Pharmacy

DATE:

By: 
Angelo J. Cifaldi, Esq.
Attorney for Bergenline Drugs


DATE:

8/28/2018

By: 
Josh Lichtblau, Director
Office of the State Comptroller
Medicaid Fraud Division

DATE:

8/28/2018

By: 
Siobhan B. Krier, Regulatory Officer
Office of the State Comptroller
Medicaid Fraud Division