

RETENTION AGREEMENT

WHEREAS, the Attorney General has determined that claims should be made against Major Pharmacies in Mississippi, including but not limited to- Fred's, Rite Aid, Walgreen, Winn Dixie, and CVS, for offering a reduced price for certain generics Usual and Customary (U & C) to cash customers, but reporting an inflated U & C for reimbursement to the Miss Division of Medicaid ; and

WHEREAS, the State of Mississippi, through Medicaid expenditures, and the citizens of the State of Mississippi, through Medicare Part B deductibles for prescription drugs, have been reimbursing an inflated amount when it should have been reimbursing at the U & C price; and

WHEREAS, the Attorney General has authority to bring this action on his own behalf pursuant to his authority and duty to investigate and prosecute civil and criminal Medicaid fraud as the Director of the Medicaid Fraud Control Unit pursuant to Miss. Code Ann. § 43-13-219 and § 43-13-221. In addition, the Attorney General has the authority to bring this action to protect the state and its citizens as consumers, pursuant to Miss Code Ann. Sections 75-24-1, et seq. In addition, the Attorney General has the authority, pursuant to Miss. Code Ann. § 7-5-55, to bring this action on his own behalf to recover taxes and state revenues improperly expended due to the action of the said Pharmacies. Further, acting as a constitutional officer possessing all power and authority inherited from the common law, as well as that specially conferred upon him by statute, the Attorney General has the right to institute, conduct, and maintain this suit in order to

enforce the laws of the State of Mississippi, preserve order, and protect the public's right to Medicaid and Medicare benefits. Finally, the Attorney General has the right to maintain this suit in a *parens patriae* capacity due to the State's quasi-sovereign interest in the economic well-being of its residents.

WHEREAS, the Attorney General has determined that the claims include fraud, suppression, breach of agreement, unjust enrichment, various state Medicaid violations, interest, prejudgment interest, penalties, and attorney fees for intentionally violating the statutes of the State of Mississippi and refund of funds which should not have been paid by the State or the citizens of Mississippi (the "Claims");

WHEREAS, the Attorney General has determined that the investigation, research, and litigation of the Claims will require the expenditure of large sums of money and require extensive work by numerous lawyers, paralegals, accountants, and secretaries who are experienced in civil recoupment litigation and Medicaid and health law issues for an extended period of time; and

WHEREAS, the Attorney General has further determined that it is in the best interests of the State and its citizens that the State retain attorneys experienced in civil recoupment litigation and Medicaid and health law to pursue the Claims; and,

WHEREAS, the below listed Law Firm is experienced in civil recoupment litigation and Medicaid and health law and has consented to represent the State of Mississippi, in association with the Attorney General, respecting the Claims and pursuant to the terms and conditions hereof.

IT IS, ACCORDINGLY, AGREED as follows:

1. The Office of the Attorney General hereby retains The Mitchell Law Firm, PLLC, Jackson, MS ("Law Firm") and its principal member, Jesse Mitchell, is hereby designated as Special Assistant Attorney General to investigate, research, and file the Claims in any appropriate Court or Courts or before any appropriate governmental agency.

2. The Attorney General does not relinquish his constitutional or statutory authority or responsibility through this Retention Agreement. The Attorney General has the sole authority to settle this litigation on behalf of the State of Mississippi and its citizens. The Law Firm shall consult with the Attorney General and obtain his approval on all material matters pertinent to these Claims and any litigation arising therefrom, and the Attorney General shall cooperate with the Law Firm and use his best efforts to secure the cooperation of other State agencies. Prior to initiating inquiries or demands to any persons or entities, the Attorney General and the Law Firm will agree upon entities to be contacted and/or claims to be pursued; the Law Firm will thereafter be entitled to its reasonable fees and expenses, as provided below, on any recovery from such agreed-upon entity or claims discovered as a consequence of the Law Firm's inquiry or demand. The Attorney General is not required, however, to assign any members of his staff to pursue the Claims, but may from time to time afford staff and other support services as the Attorney General deems appropriate. The Attorney General shall designate a member(s) of his staff to monitor these Claims, and the Law Firm shall keep the

Attorney General and his designated staff member(s) fully informed on all matters pertaining to the Claims.

3. The Attorney General and the Law Firm both recognize that the Claims present numerous factual and legal obstacles, and that no assurance of success on the Claims has or can be made.

4. The Attorney General shall maintain responsibility for the public distribution of information concerning this matter. All press inquiries shall be referred to the Attorney General for comment and response.

5. Notwithstanding the potential difficulties, the Law Firm has agreed to represent the State, and the Attorney General hereby agrees that the Law Firm will be compensated for its efforts on the following basis:

- A. Fee Agreements: *See* attached Exhibit A - Retention Agreement; and
- B. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by the Attorney General, shall initially be borne entirely by the Law Firm, but shall be reimbursed from any gross recoveries from the pursuit of such claims on a case-by-case basis; and
- C. The Law Firm shall receive no compensation or reimbursement other than set out above. In the event that no recovery is realized, the Law Firm shall receive no compensation or reimbursement.

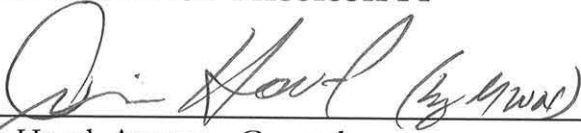
6. With the approval of the Attorney General, the Law Firm may associate other attorneys at its own expense and at no cost to the State of Mississippi.

Notwithstanding such association of other attorneys, this Retention Agreement is non-assignable and non-transferable, nor are the Law Firm's commitments delegable without the express, written approval of the Attorney General.

DATED, this 17th day of June, 2016.

**ATTORNEY GENERAL OF
THE STATE OF MISSISSIPPI**

By:



Jim Hood, Attorney General

MITCHELL LAW FIRM, PLLC

By:



Jesse Mitchell

Exhibit "A"

Twenty-five percent (25%) of any recovery up to Ten Million Dollars (\$10,000,000.00); plus

Twenty percent (20%) of any portion of such recovery between Ten Million Dollars (\$10,000,000.00) and Fifteen Million Dollars (\$15,000,000.00); plus

Fifteen percent (15%) of any portion of such recovery between Fifteen Million Dollars (\$15,000,000.00) and Twenty Million Dollars (\$20,000,000.00); plus

Ten percent (10%) of any portion of such recovery between Twenty Million Dollars (\$20,000,000.00) and Twenty-Five Million Dollars (\$25,000,000.00); plus

Five percent (5%) of any portion of such recovery exceeding Twenty-Five Million Dollars (\$25,000,000.00).