

MEMORANDUM

Date: January 20, 2016

TO: MAYOR DUNCAN AND TOWN COMMISSIONERS

CC: Dave Bullock, Town Manager

FROM: Maggie D. Mooney-Portale, Town Attorney

SUBJECT: Settlement offer negotiated by Florida Attorney General Bondi in *United States ex rel. Perez Stericycle, Inc.*, civil action No. 1:08-cv-2390, pending in the United States District Court for the Northern District of Illinois

A settlement offer was received by the Town Attorney's office on January 12, 2016 from the Florida Attorney General Pam Bondi's office relating to a 2008 civil lawsuit pending in the federal district court in the Northern District of Illinois against Stericycle, Inc . ("Stericylce") alleging violations of the False Claims Act. Several states participated in this suit in which it was alleged that Stericylce improperly overcharged state and local governmental customers for fuel and energy surcharges. Attorney General Bondi's office represented the State of Florida and its local government political subdivisions in this action and negotiated a settlement amount to resolve the Florida claims. Her office has calculated a pro rata distribution of the settlement proceeds to various Florida local governments. The Town has been identified as one of the Florida local governments eligible for a pro rata share of the local government settlement amounts, and the Town's pro rata share as determined by the Florida Attorney General's office is \$4,772,70.00 (four thousand seven hundred seventy two dollars and 70/100). An electronic transfer in that amount has been transmitted to the

Town. According to the terms of the Settlement Agreement, the Town will be deemed to have been accepted the settlement terms and released Stericycle for any alleged violations of the False Claims Act, if the Town retains this amount in the Town's account. If the Town chooses to reject the settlement, then the settlement sum shall be deemed forfeited. The deadline to accept or reject the settlement offer is February 15, 2016.

The following is provided for your information and consideration: (1) the January 12, 2016 correspondence from Attorney General Bondi's office relating to the settlement; and (2) the Settlement Agreement.

This item was discussed at the January 19, 2016 Workshop meeting and is being forward to the February 1, 2016 Regular Meeting agenda for consideration. Because acceptance of the settlement sums includes the release of any claim the Town may have under the False Claim Act against Stericycle is it appropriate for the Town Commission to make the determination on this settlement. The Town Manager and Town Attorney are seeking direction on whether the Town Commission wants to approve the settlement and release, or reject the settlement.

Please don't hesitate to contact me if you have any questions about this agenda item.



STATE OF FLORIDA

**PAM BONDI
ATTORNEY GENERAL**

January 12, 2016

VIA OVERNIGHT MAIL

Ms. Susan Smith
Director of Finance
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

Notice of Settlement of *United States of America et al. ex rel. Perez v. Stericycle, Inc.*, Civil Action No. 1:08-cv-2390, United States District Court for the Northern District of Illinois

Dear Ms. Smith:

I am pleased to inform you of an October 8, 2015, multistate settlement of the above-captioned litigation. You are receiving this notice and payment because your organization has been identified as a local governmental entity that is entitled to participate in the settlement proceeds. Accordingly, I am happy to advise you that an electronic funds transfer in the amount of \$4,772.70 has already been deposited to your entity's bank account.

This amount constitutes your entity's pro rata share of the proceeds under a settlement agreement entered into by my office. The settlement is the result of a qui tam or False Claims Act lawsuit which alleged Stericycle, Inc. ("Stericycle") may have overcharged many governmental customers through the use of impermissible fuel and energy surcharges. Enclosed for your information is the complaint filed in the lawsuit and the settlement agreement.

While the lawsuit did not include local government purchases in Florida, my office asked that the settlement be expanded to provide relief to local governmental entities and Stericycle agreed to my request. In connection with the settlement discussions, Stericycle provided my office with purchase data for Florida local governmental entities. My office then used that purchase information and a common damage formula to determine the amount that each governmental entity would receive.

By retaining this recovery, you are consenting to the provisions of the enclosed Settlement Agreement, including the provision in Paragraph 7 of the Agreement. If you decide to not participate in this settlement, please contact my office as soon as possible but by no later than February 15, 2016 to make the necessary arrangements to return your pro rata share of the settlement proceeds.

While the ultimate decision must be made by your entity, my office believes that the settlement represents a favorable outcome. If you have any questions about this notice or the settlement terms, please feel free to contact the lead attorney in my office, Russell Kent, (850) 414-3854 or Russell.Kent@myfloridalegal.com.

Thank you for allowing me the opportunity to serve you.

Sincerely,

A handwritten signature in black ink that reads "Pam Bondi". The signature is written in a cursive, flowing style.

Pam Bondi
Attorney General

Enclosures

2013.08.01

SETTLEMENT AGREEMENT

This Agreement of Settlement ("Agreement") is entered into by and between Plaintiff-Relator Jennifer Perez ("Relator"), and defendant Stericycle, Inc. ("Stericycle"), through their authorized representatives. Relator and Stericycle are collectively the "Parties."

RECITALS

WHEREAS:

A. Stericycle, based in Lake Forest, Illinois, is a provider of regulated medical waste management services and pharmaceutical returns services to medical offices, hospitals, other health care providers, and other entities. Stericycle does or has done business with government customers at the federal, state, and local government level ("Government Customers").

B. Relator is an individual resident of the State of Illinois. On April 28, 2008, Relator filed a *qui tam* action in the United States District Court for the Northern District of Illinois captioned *United States of America ex rel. Jennifer D. Perez v. Stericycle, Inc.*, Case No. 1:08-cv-2390 (hereinafter referred to as the "Action").

C. On June 28, 2010, Relator filed an Amended Complaint adding the States of California, Delaware, Florida, Illinois, Indiana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, Tennessee, the Commonwealths of Massachusetts and Virginia, and the District of Columbia (except for New Hampshire and New York, "Government Entities") as plaintiffs and alleging claims for relief under the respective state false claims law on behalf of state and local governmental agencies, as applicable.

D. On July 23, 2013, Relator filed her Second Amended Complaint ("SAC") in which she alleged claims on behalf of the Government Entities. The SAC dropped any claims on behalf of the State of New Hampshire. The SAC alleges Stericycle improperly increased its

service price to certain government customers, from January 1, 2003 until June 30, 2014, without consent of the Government Customers or contractual authorization, resulting in overpayment for products and services ("Covered Conduct").

E. Stericycle denies all allegations of wrongdoing in connection with the Covered Conduct, and this Agreement shall not be construed as an admission of any wrongdoing or liability by Stericycle.

F. Neither the United States, any State, or the District of Columbia has intervened in the Action.

G. Relator claims an entitlement to a share of the proceeds of this Agreement, the terms of which are incorporated in a separate agreement between Relator and the Government Entities, and to reasonable attorneys' fees, costs, and expenses under the federal False Claims Act and its state analogues.

H. The Attorneys General for the States of California, Florida, New Jersey and Rhode Island do not represent all governmental entities within their states under their respective false claims acts, including local governmental or political subdivision customers within their States, which were also allegedly affected by the Covered Conduct ("Affected Local Governmental Customers"). The Attorneys General of California, Florida, New Jersey and Rhode Island will provide effective notice of the Settlement to each Affected Local Governmental Customer pursuant to Paragraphs 8 and 9 of this Agreement.

NOW THEREFORE, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and the unique remedies and penalties exclusively available under the federal False Claims Act and its state analogues, and in consideration of the mutual promises and obligations of this Agreement, Relator and Stericycle agree as follows:

1. Stericycle agrees to pay \$26,750,000.00 ("Settlement Sum") plus \$1,750,000.00 ("Attorneys' Fees Settlement Sum"), for a total payment amount of \$28,500,000.00 ("Total Payment Sum"). Stericycle will pay the Settlement Sum to a third party as described below. The allocation of the Settlement Sum between the Government Entities has been determined by and among the Government Entities without any involvement by or input whatsoever from Stericycle or Stericycle's counsel. In addition, Stericycle alone agrees to pay the Attorneys' Fees Settlement Sum in full and final satisfaction of any claims by Relator and Relator's Counsel for reasonable expenses, attorneys' fees, and costs. The Total Payment Sum resolves any and all claims that were alleged on behalf of the Government Entities by Relator in the Action and Relator's claim for attorneys' fees, costs, and expenses under 31 U.S.C. § 3730(d) and analogous provisions of state False Claims Acts.

2. No later than fourteen (14) days after the Effective Date of this Agreement, Stericycle shall pay, pursuant to written instructions from Relator's counsel, the Settlement Sum to the third party administrator, Garden City Group, LLP. No later than fourteen (14) days after receiving payment of the Settlement Sum from Stericycle, Garden City Group, LLP shall distribute the Settlement Sum to the Government Entities pursuant to written instructions provided by the Government Entities. No later than fourteen (14) days after the Effective Date of this Agreement, Stericycle shall pay the Attorneys' Fees Settlement Sum to and in the manner directed by Relator's counsel.

3. Stericycle shall comply with all applicable state and/or federal laws, rules, and regulations as now constituted or as may hereafter be amended.

4. Relator affirms that this Agreement is fair, adequate, and reasonable under all the circumstances in accordance with 31 U.S.C. § 3730(c)(2)(B) and similar state statutes, and promises not to challenge the terms of this Agreement.

5. A stipulation of dismissal with prejudice will be filed, along with the Government Entities consent to dismissal, if so required, fourteen (14) calendar days after payment is received by all Government Entities pursuant to paragraph 2.

6. Other than payment of the Attorneys' Fees Settlement Sum, each party to this Agreement shall bear its own attorneys' fees and costs.

7. Subject to the other provisions and limitations set out in this Agreement and effective as of the receipt of the Total Payment Sum, Relator, on behalf of herself, and for her heirs, successors, attorneys, agents, and assigns, hereby agrees to and shall release Stericycle, and each of Stericycle's respective past and present affiliates, parents, subsidiaries, divisions, branches, departments, predecessors, successors, assigns, and the heirs, principals, employees, associates, owners, stockholders, devisees, agents, distributors, directors, officers, representatives, insurers, attorneys, and predecessors and successors in interest from any and all claims that she may have against Stericycle in her own right or that she brought in the Action for the Covered Conduct, including but not limited to claims under the federal False Claims Act, 31 U.S.C. §§ 3729-3733 and/or its state analogues.

In connection with the foregoing, Relator acknowledges that she is familiar with and hereby waives and relinquishes any and all rights and benefits she may have under the laws of any state, similar to and including Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing

the release, which if known by him must have materially affected his settlement with the debtor.

8. Within ten (10) business days of the Effective Date, Stericycle will provide the Attorney General's Offices in California, Florida, and New Jersey with sufficient contact information of presently-known government customers in the respective State to allow them to provide effective notice to each Affected Local Governmental Customer ("Contact Information"). Within 45 business days of the date by which the Attorney General's Offices in California, Florida, and New Jersey receive the Contact Information, the Attorney General's Offices in California, Florida, and New Jersey will provide to each Affected Local Governmental Customer its check along with a letter or other notification that contains the following language in boldface text: **"By accepting and depositing the enclosed check within 60 days of its issuance, you are consenting to the provisions of the enclosed Settlement Agreement, including the provisions in paragraph 7 of the Agreement. If you do not deposit the enclosed check within 60 days of its issuance, you will forfeit your pro rata share of the settlement proceeds."** Rhode Island has received the Contact Information from Relator's counsel and will provide to each Affected Local Governmental Customer its check along with a letter or other notification that contains the language cited above. Contemporaneous copies of the notification will be provided to Stericycle. Any amounts that an Affected Local Governmental Customer does not timely deposit under this paragraph shall be retained by the State where that Affected Local Governmental Customer is located.

9. Each Affected Local Governmental Customer in California, Florida, New Jersey and Rhode Island will have 60 days of the issuance of the check and letter or other notification described in the above paragraph, to review the Notification, seek additional information, if

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needed, from the Attorney General's Offices in those states, and decide whether to consent to the settlement consistent with the terms set forth in paragraph 8 herein. An Affected Local Governmental Customer's failure to deposit the check within 60 days of its issuance will not result in any increase in the pro rata share of the settlement funds to which any other Affected Local Governmental Customer is entitled under the terms of this Agreement.

10. Subject to the other provisions and limitations set out in this Agreement and effective as of the receipt of the Total Payment Sum, Stericycle, for itself as well as for each of Stericycle's respective past and present affiliates, parents, subsidiaries, divisions, branches, departments, predecessors, successors, assigns, and the heirs, principals, employees, associates, owners, stockholders, devisees, agents, distributors, directors, officers, representatives, insurers, attorneys, and predecessors and successor in interest, does and hereby agrees to and does release Relator, her heirs, successors, attorneys, agents, and assigns from any claim (including attorneys' fees, costs, and expenses of every kind and however denominated) that Stericycle has asserted, or could have asserted, or may assert in the future against Relator and her heirs, successors, attorneys, agents, and assigns, including without limitation, claims related to the Covered Conduct and the investigation and prosecution thereof.

In connection with the foregoing, Stericycle acknowledges that it is familiar with and hereby waives and relinquishes any and all rights and benefits it may have under the laws of any state, similar to and including Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

11. Relator and her counsel agree that all documents, data, or other information

provided or produced to Relator by Stericycle in connection with or related to the Action, will be

(1) returned to counsel for Stericycle; or

(2) destroyed and Relator will certify in writing that all such information was destroyed;

within thirty (30) days of the dismissal of the Action.

12. Documents provided or produced by Stericycle to the States of North Carolina and Tennessee and the Commonwealths of Massachusetts and Virginia, will be treated as and kept confidential to the extent provided by law.

13. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

14. This Agreement is governed by the laws of the State of Illinois. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of Illinois.

15. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of each of the Parties.

16. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the person and entities indicated below.

17. 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.

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

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19. This Agreement is binding on Stericycle's successors, transferees, heirs, and assigns.

20. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

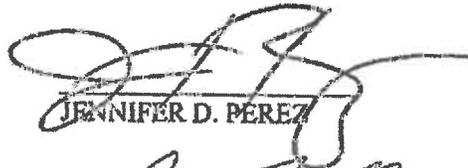
21. The Parties agree that either Party may disclose this Agreement publicly, but all other information related to this Action or this Agreement that has not been publicly filed or is not a matter of public record is confidential and may not be disclosed by either of the Parties for any reason, except as otherwise required by law or court order.

22. This Agreement is effective on the date the last party signs this Agreement ("Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement.

JENNIFER D. PEREZ

DATED: Oct. 16, 2015


JENNIFER D. PEREZ

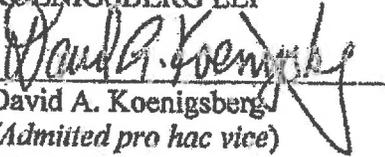
DATED: October 15, 2015


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DATED: Oct. 6, 2015

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DATED: 10/6, 2015



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STERICYCLE, INC.

DATED: October 8, 2015

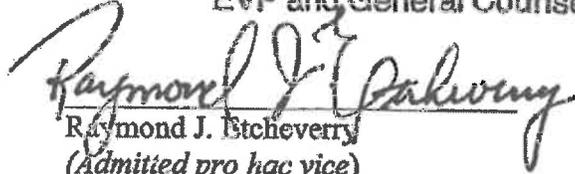
BY:


NAME:

John Schetz

TITLE: EVP and General Counsel

DATED: October 8, 2015


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End of Agenda Item