

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS AGREEMENT is made on March 14, 2014 ("Agreement")

BETWEEN:

- (1) Hospice Foundation of America, Inc., whose address is 1710 Rhode Island Avenue, NW, Suite 400, Washington D.C. 20036 ("HFA"), on the one hand; and
- (2) Carol Jenkins, whose address is 2520 Ravine Drive, Nashville, TN 37217 ("Ms. Jenkins");
- (3) Bee, L.C., whose address is 6849 Old Dominion Drive, Suite 315, McLean, VA 22101 ("Bee"); and
- (4) The New Hope Foundation, Inc. whose address is 629 Woodland Street, Nashville, TN 37206 ("New Hope Foundation"), on the other hand (Ms. Jenkins, Bee, and New Hope Foundation being collectively referred to as "Defendants");

each of whom is referred to in this Agreement as a "Party" or, together, the "Parties".

WHEREAS:

- (A) HFA brought an action entitled *Hospice Foundation of America, Inc. v. The New Hope Foundation d/b/a Hospice Fund of America; Bee, L.C.; and Carol Jenkins* in the United States District Court for the Eastern District of Virginia, Civil Action No. 1:14-cv-00064-AJT-JFA on January 22, 2014, alleging trademark infringement and unfair competition.
- (B) The Parties, without admitting any fault, liability, or wrongdoing, desire to settle and resolve any and all of their outstanding disputes arising in and related to the action, with each party to bear their own costs.

IT IS AGREED as follows:

1. FULL AND FINAL SETTLEMENT

- 1.1 The Parties agree that the terms of settlement set out under this Agreement are in full and final settlement and satisfaction of, and that except with respect to the Parties' obligations under this Agreement, HFA and Defendants mutually release the other, and their officers, directors, and employees, and their successors and assigns, from any and all claims, actual or potential, that HFA may have against Defendants or that Defendants may have against HFA, whether present or future and whether known or unknown and whether arising from or affected by any change in the law or any other change of circumstance of any sort, which each Party or any of them has or may have against the other Party or any of them arising out of or in connection with, whether directly or indirectly:
 - 1.1.1 use, application and/or registration by Defendants of the trademark "HFA" in the United States of America and any other territory in the world;
 - 1.1.2 use, application and/or registration by Defendants of the trademark "Hospice Foundation of America" in the United States of America and any other territory in the world; and/or
 - 1.1.3 use, application and/or registration by Defendants of the name "Hospice Fund of America" in the United States of America and any other territory in the world;whether arising (without limitation) in contract, tort, equity, restitution, by virtue of any quantum meruit or otherwise howsoever.
- 1.2 Within two business days after receipt of the written notice of compliance required by Clause 2.1.3 below, HFA shall file the Stipulation of Dismissal attached to this Agreement (Exhibit 1).
- 1.3 For the avoidance of doubt, Defendants acknowledge that nothing in this Agreement shall prohibit or restrict HFA from filing a litigation or otherwise pursuing a claim based upon

Defendants' actions after the execution date, including pursuing a breach of contract claim or otherwise seeking to enforce this Agreement and that nothing in this Agreement shall prohibit or restrict HFA from pursuing claims for damages incurred after the execution of this Agreement in any action seeking to enforce this Agreement.

2. DEFENDANTS' OBLIGATIONS

2.1 Defendants shall:

- 2.1.1 as of the date of execution of this Agreement, cease use of the marks "Hospice Fund of America" and "HFA" or any mark confusingly similar to "Hospice Foundation of America" or "HFA" anywhere in the world whether as a trademark, domain name or URL, company name or trading name, including but not limited to www.hospicefundofamerica.org;
- 2.1.2 as of March 14, 2014, destroy any materials within the possession, custody, or control of Defendants that contain, reference, or otherwise use the marks "Hospice Fund of America" or "HFA" or any mark confusingly similar to "Hospice Foundation of America" or "HFA", including but not limited to any letters used for fundraising;
- 2.1.3 within two business days of the destruction of materials specified in Clause 2.1.2 below, to provide HFA written notice of compliance;
- 2.1.4 not in future to use, register, or apply to register any trade mark, domain name, company name or trading name anywhere in the world incorporating or comprising the name "Hospice Fund of America", the marks "Hospice Foundation of America" and "HFA" or any mark confusingly similar to "Hospice Foundation of America" or "HFA"; and
- 2.1.5 not to challenge, whether directly or indirectly, legally or equitably, HFA's ownership, right to use, or right to enforce the marks "Hospice Foundation of America" and "HFA" or any new trade mark applications which HFA may seek to file in the future in any jurisdiction and which are identical or substantially similar to the marks "Hospice Foundation of America" or "HFA" or the validity of any of the aforementioned marks;

- 2.2 Defendants represent and warrant that they have already ceased all use as required by Clause 2.1.1 above.

3. TERMINATION

This Agreement shall terminate upon either of the following: (i) HFA dissolves or ceases to conduct any business activities, or (ii) the mark "Hospice Foundation of America" is abandoned, cancelled or is otherwise found to be invalid or unenforceable.

4. WARRANTIES

Each Party warrants and represents that it has consulted with counsel of their choice with respect to this Agreement prior to its execution.

5. MISCELLANEOUS

- 5.1 All obligations under the terms of this Agreement shall be joint and several obligations as between New Hope Foundation and Ms. Jenkins, and shall be several as to Bee and all provisions expressed to bind Defendants shall apply jointly and severally to New Hope Foundation and Ms. Jenkins, and shall apply severally to Bee.
- 5.2 No delay or failure by a Party to exercise or enforce (in whole or in part) any right provided by this Agreement or by law shall operate as a release or waiver, or in any way limit that Party's ability to further exercise or enforce that, or any other, right. A waiver of any breach

of any provision of this Agreement shall not be effective, or implied, unless that waiver is in writing and is signed by the party against whom that waiver is claimed.

- 5.3 No amendment or variation to this Agreement shall be effective unless made in writing and signed on behalf of each of the Parties.
- 5.4 Each Party shall, and shall use all reasonable endeavours to ensure that any necessary third party shall execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
- 5.5 The Parties agree that all disputes hereunder shall be subject to the exclusive jurisdiction of the United States Federal District Court for the Eastern District of Virginia.


IN WITNESS whereof this Agreement has been entered into on the date first written above.

SIGNED BY:

For and on behalf of

Hospice Foundation of America, Inc.

By a duly authorised Officer

Signature  _____

SIGNED BY:

For and on behalf of

The New Hope Foundation, Inc.

By a duly authorised Officer

Signature  _____

SIGNED BY:

For and by

Carol Jenkins

Signature  _____

SIGNED BY:

For and on behalf of

Bee, L.C.

By a duly authorised Officer

Signature  _____

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

HOSPICE FOUNDATION OF AMERICA, INC.,

Plaintiff,

v.

THE NEW HOPE FOUNDATION, INC. D/B/A
HOSPICE FUND OF AMERICA, BEE, L.C., and
CAROL JENKINS,

Defendants.

Civil Action No. 1:14-cv-00064-AJT-
JFA

STIPULATION OF DISMISSAL

WHEREAS, on March 14, 2014, the parties entered into a Settlement Agreement and Mutual Release to resolve the claims in this action on the terms and conditions set forth therein;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the parties, through their undersigned counsel, that this action, including all claims, is hereby dismissed with prejudice pursuant to Federal Rule of Civil Procedure Rule 41(a)(1)(A)(ii). Each party shall bear its own costs, fees, and expenses.

Respectfully submitted this ___ day of March 2014:

By: _____

Gregory N. Stillman (VSB No. 14308)
Sonja Garrelts (VSB No. 83226)
HUNTON & WILLIAMS LLP
500 East Main Street, Suite 1000
Norfolk, VA 23510
Telephone: (757) 640-5300
Facsimile: (757) 625-7720
gstillman@hunton.com
sgarrelts@hunton.com

*Counsel for The New Hope
Foundation, Inc. d/b/a Hospice
Fund of America; Bee, L.C.; and
Carol Jenkins*
Of Counsel:

Darren W. Saunders
MANATT, PHELPS & PHILLIPS, LLP
7 Times Square
New York, NY 10036
Telephone: (212) 790-4600
Facsimile: (212) 790-4545
dsaunders@manatt.com

*Counsel for The New Hope
Foundation, Inc. d/b/a Hospice
Fund of America; Bee, L.C.; and
Carol Jenkins*

By: _____

Kevin M. Dinan (VSB No. 25517)
Taylor T. Lankford (VSB No. 80599)
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4707
Tel: (202) 737-0500
Fax: (202) 626-3737
kdinan@kslaw.com
tlankford@kslaw.com

*Counsel for Plaintiff
Hospice Foundation of America*

Of Counsel:

Ethan Horwitz
Jeffrey S. Seddon, II (*Pro Hac Vice*)
KING & SPALDING LLP
1185 Avenue of the Americas
New York, New York 10036-4003
Tel: (212) 556-2100
Fax: (212) 556-2222
ehorwitz@kslaw.com
jseddon@kslaw.com

*Counsel for Plaintiff
Hospice Foundation of America*