

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the "United States"), Defendant Rite Aid Corporation (Rite Aid), and Relator Jack Chin (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Rite Aid is a Delaware corporation and national retail drugstore chain with its principal place of business in Camp Hill, Pennsylvania. Rite Aid operates over 4,500 stores in 31 states and the District of Columbia.

B. On February 24, 2009, Relator filed a *qui tam* action in the United States District Court for the Central District of California captioned *United States, et al., ex rel. Chin v. Rite Aid Corporation, et al.*, Case No. CV-09-01293 PGS(PJWx)(Under Seal), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relator filed an amended complaint on or about May 4, 2009. The Civil Action alleges that Rite Aid violated the False Claims Act, 31 U.S.C., § 3729, *et seq.*, the Anti-kickback Statute, 42 U.S.C. 1320a-7b, and the Civil Monetary Penalties Law, 42 U.S.C. § 132-a-7a(a)(5), by offering illegal inducements to beneficiaries of government health plans in order to influence the beneficiaries to transfer their prescriptions to Rite Aid pharmacies.

C. The United States contends that Rite Aid submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the *Rite Aid Settlement Agreement*

Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1, and the Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 - 1396w-5 (collectively, the “government health programs”).

D. The United States contends that it has certain civil claims against Rite Aid from May 23, 2008 through October 31, 2010 because Rite Aid allegedly offered and/or provided improper inducements, in the form of gift cards, gift checks, and other promotions, to the beneficiaries of the government health programs in order to influence their decision to transfer prescriptions to Rite Aid pharmacies. That conduct is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is made in compromise of disputed claims. It is neither an admission of liability by Rite Aid nor a concession by the United States that its claims are not well founded. Rite Aid expressly denies the allegations of the United States, Medicaid Participating States and Relator as set forth herein and in the Civil Action, and denies that it has engaged in any wrongful conduct in connection with the Covered Conduct or otherwise. Neither this Agreement, its execution, nor the performance of any obligations under it, including any payment, nor the fact of the settlement, is intended to be, or shall be deemed as, an admission of liability or wrongdoing, or other expression reflecting upon the merits of the dispute by Rite Aid.

F. Relator and/or Relator’s counsel claim entitlement under 31 U.S.C. §3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Rite Aid shall pay to the United States, the sum of Two Million Nine Hundred and Ninety Thousand (\$2,990,000) and interest accrued at an annual rate of 2.375 percent from October 1, 2014 to the effective date of this Settlement Agreement (Settlement Amount) no later than seven days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Conditioned upon the United States receiving the Settlement Amount from Rite Aid and as soon as feasible after receipt, the United States shall pay 17 percent of the Settlement Amount to Relator by electronic funds transfer in accordance with counsel for Relator's written instructions.

3. Rite Aid shall pay to the Relator's counsel, for Attorney's Fees, Costs and Expenses, the sum of \$80,000 dollars (hereinafter the "Fee Amount"). The Fee Amount shall constitute a debt immediately due and owing to the Relator's counsel on the Effective Date of this Agreement. This debt shall be discharged by payment of the Fee Amount by means of electronic funds transfer not later than twenty (20) business days after the Effective Date of this Agreement, made pursuant to written instructions to be provided to Rite Aid by Relator's counsel on or before the Effective Date of this Agreement.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Rite Aid's full payment of the Settlement Amount, the United States releases Rite Aid together with its current and former direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners, officers, directors, trustees, shareholders, employees, agents, and affiliates; the predecessors, successors, transferees, and assigns of any of them, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. In consideration of the obligations of Rite Aid set forth in the Terms and Conditions of this Settlement Agreement, and conditioned upon Rite Aid's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Rite Aid together with its current and former direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners, officers, directors, trustees, shareholders, employees, agents, and affiliates; the predecessors, successors, transferees, and assigns of any of them, from all causes of action, whether known or unknown, that Relator has standing to bring, which Relator may have or claim to have as of the date of this Agreement for any violation of any federal, state or local law, contract, duty, standard of care, right, other source of obligation, including but not limited to all causes of action related to any civil claims that Relator has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C.

§§ 3729-3733, state false claims acts, common law, or any other statute creating civil causes of action.

6. Notwithstanding the releases given in paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- i. Any liability of individuals (except as explicitly stated in this Agreement).

7. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action as to Rite Aid or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action as to Rite Aid.

8. Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Rite Aid, and its officers, agents, and employees, from any liability to Relator arising from the filing of the claims against Rite Aid in the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs related to the claims against Rite Aid in the Civil Action, except as expressly stated in Paragraphs 2 and 3 of this Settlement Agreement.

9. Rite Aid, and its officers, agents, and employees, releases Relator and his heirs, successors, attorneys, agents, and assigns, from any liability to Rite Aid and its officers, agents, and employees arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs. Nothing in this Agreement shall constitute a waiver of Relator's claims asserted against any other party in the Civil Action.

10. Rite Aid waives and shall not assert any defenses Rite Aid may have to any criminal prosecution or administrative action relating to the Covered Conduct that

may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. Rite Aid fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Rite Aid has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Rite Aid agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

13. Rite Aid agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the

regulations and official program directives promulgated thereunder) incurred by or on behalf of Rite Aid, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit and civil investigation of the matters covered by this Agreement;
- (3) Rite Aid's investigation, defense, and corrective actions undertaken in response to the United States' audit and civil investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
and
- (5) the payment Rite Aid makes to the United States pursuant to this Agreement and any payments that Rite Aid may make to Relator, including costs and attorneys fees.

b. Future Treatment of Unallowable Costs: If applicable, Unallowable Costs shall be separately determined and accounted for by Rite Aid, and Rite Aid shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Rite Aid or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: If applicable, Rite Aid further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Rite Aid or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Rite Aid agrees that the United States, at a minimum, shall be entitled to recoup from Rite Aid any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Rite Aid or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Rite Aid or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Rite Aid's books and records to

determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 15 (waiver for beneficiaries paragraph), below.

15. Rite Aid agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

16. Upon receipt of the payment described in Paragraphs 1, 2, and 3 above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action as to Rite Aid pursuant to Rule 41(a)(1). The United States shall agree to the dismissal of the Civil Action with prejudice as to the Covered Conduct released in the Settlement Agreement, and without prejudice as to any other claims against Rite Aid. Relator shall agree to the dismissal with prejudice of his claims against Rite Aid in the Civil Action.

17. Other than as provided in Paragraph 3 above, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United

States District Court for the Central District of California. 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.

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

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

22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

23. This Agreement is binding on Rite Aid's successors, transferees, heirs, and assigns.

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

25. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

26. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 11/17/14

BY: Allie Pang
Allie Pang
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 11.14.14

BY: David M. Harris
David M. Harris
Assistant U.S. Attorney
Central District of California

DATED: 11/14/14

BY: Robert K. DeConti
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

DEFENDANT RITE AID CORPORATION

DATED: 11/10/2014 BY: 

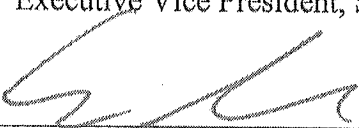
Marc Strassler
Rite Aid Corporation
Executive Vice President, Secretary and General Counsel


DATED: _____ BY: _____


Eric W. Sitarchuk
Morgan, Lewis & Bockius LLP
Counsel for Defendant

DEFENDANT RITE AID CORPORATION

DATED: _____ BY: _____
Marc Strassler
Rite Aid Corporation
Executive Vice President, Secretary and General Counsel

DATED: 11/10/14 BY: 
Eric W. Sitarchuk
Morgan, Lewis & Bockius LLP
Counsel for Defendant

DATED: 11/12/14 BY: 
Jack Chin
Relator

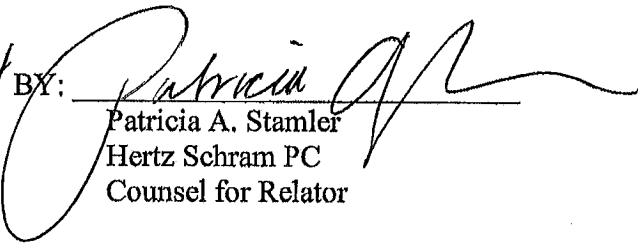
DATED: 11/12/14 BY: 
Phil Benson
Warren Benson Law Group
Counsel for Relator

DATED: _____ BY: _____
Patricia A. Stamler
Hertz Schram PC
Counsel for Relator

RELATOR JACK CHIN

DATED: _____ BY: _____
Jack Chin
Relator

DATED: _____ BY: _____
Phil Benson
Warren Benson Law Group
Counsel for Relator

DATED: 11/11/14 BY: 
Patricia A. Stamler
Hertz Schram PC
Counsel for Relator