

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between: (i) the United States of America, acting by and through the United States Department of Justice and on behalf of the Office of Inspector General of the Department of Health and Human Services ("OIG-HHS"), the Office of Personnel Management ("OPM"), which administers the Federal Employee Health Benefits Program ("FEHBP"), and TRICARE Management Activity ("TMA"), formerly known as the Office of the Civilian Health and Medical Program of the Uniformed Services ("OCHAMPUS"), which administers the TRICARE program (collectively the "United States"); and (ii) Rite Aid Corporation ("Rite Aid"). Collectively, all of the above will be referred to as "the Parties."

I. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

1. Rite Aid is a national pharmacy chain currently operating in the District of Columbia and twenty-eight states in the United States.
2. Rite Aid submitted or caused to be submitted prescription claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396v, in Alabama, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Vermont, Washington, West Virginia, and Wyoming (hereinafter referred to as the "Participating States"). Rite Aid also submitted or caused to be submitted prescription claims for payment to FEHBP, 5 U.S.C. §§ 8901-8914, and TRICARE, 10

U.S.C. §§ 1071-1110.

3. On April 23, 1998, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730, Larry B. Friedman ("Friedman"), in his individual capacity and as a relator on behalf of the United States, filed an amended complaint, under seal, in United States ex rel. Larry B. Friedman v. Rite Aid Corporation, Civil Action No. 97-CV-7889, in the United States District Court for the Eastern District of Pennsylvania (the "Lawsuit"). The United States intervened in the Lawsuit on September 28, 2001. The Lawsuit avers that Rite Aid violated the False Claims Act by: (i) allegedly returning to stock and failing to delete or readjudicate prescriptions that were billed to federal health insurance programs but were not picked up by customers; and (ii) allegedly restocking items without "lot control," thereby allegedly resulting in "adulteration of stock." The United States contends that it has sustained damages to the Medicaid, FEHBP, and TMA programs between January 1, 1997 and December 31, 2001 under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines because Rite Aid billed the United States for prescriptions that were never delivered to customers. The conduct specified above in this paragraph and below in footnote 1 is hereinafter referred to as the "Covered Conduct."¹
4. The United States also contends that it has certain administrative claims against Rite Aid for the Covered Conduct under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs, 42 U.S.C. §1320a-7(b), the provisions for civil monetary penalties, 42 U.S.C. §1320a-7a, the provisions for exclusion from TRICARE, 32 C.F.R. §199.9, and the provisions for debarment from

FEHBP, 5 U.S.C. §8902a and 5 C.F.R. Part 970, subpart J.

5. Rite Aid has denied the allegations in the Lawsuit and denies any and all wrongdoing and/or liability under the False Claims Act, 31 U.S.C. §§ 3729-3733, or any other federal or state law or regulation with respect to the Covered Conduct.
6. In order to avoid the disruption, delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties have agreed to a full and final settlement as set forth below.

II. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

A. OBLIGATIONS OF RITE AID

7. Payment to the United States: Rite Aid agrees to pay \$7,000,000 (“Settlement Amount”) to the United States and Participating States, who will be executing separate agreements with Rite Aid concerning the Covered Conduct, within seven business days of execution of this Agreement. The United States, in consultation with the Participating States, has determined the distribution of the Settlement Amount to the United States, the Participating States, and other parties.
8. Manner and Method of Payment: The payment provided for in Paragraph 7 above shall be by electronic transfer pursuant to instructions provided by the United States and Participating States.
9. Integrity Agreement: Simultaneously herewith, Rite Aid is entering into a Corporate

Integrity Agreement ("CIA") with the OIG-HHS. That CIA is incorporated into this Agreement by reference. Rite Aid shall immediately, upon execution of the CIA, implement its obligations thereunder in the manner and according to the schedule set forth in the CIA.

B. OBLIGATIONS OF THE UNITED STATES

10. In consideration of the obligations of Rite Aid under this Agreement and subject to the exceptions from release (Paragraph 14), and conditioned upon payment in full of the Settlement Amount, the United States shall release and forever discharge Rite Aid and each of its past and present successors, assigns, officers, directors, managers, employees, parents, subsidiaries and affiliates from any civil or administrative monetary claims that the United States has or may have 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 unjust enrichment, payment by mistake, fraud, and breach of contract for the Covered Conduct.
11. In consideration of the obligations of Rite Aid set forth in this Agreement and the CIA, and conditioned upon Rite Aid's payment in full of the Settlement Amount, OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Rite Aid under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7)(permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 14 below, and as reserved in this Paragraph. OIG-HHS expressly

reserves all rights to comply with any statutory obligations to exclude Rite Aid from the Medicare, Medicaid or other Federal health care programs under 42 U.S.C. § 1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 14 below.

12. In consideration of the obligations of Rite Aid set forth in this Agreement and conditioned upon Rite Aid's payment in full of the Settlement Amount, TMA agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion or suspension from the TRICARE programs against Rite Aid and each of its past and present successors, assigns, officers, directors, managers, employees, parents, subsidiaries and affiliates under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 14 below, and as reserved in this Paragraph. TMA expressly reserves authority to exclude Rite Aid from the TRICARE program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii), based upon the Covered Conduct. Nothing in this Paragraph precludes TMA from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 14 below.
13. In consideration of the obligations of Rite Aid set forth in this Agreement and conditioned upon Rite Aid's payment in full of the Settlement Amount, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking debarment from the FEHBP program against Rite Aid and each of its past and present successors, assigns, officers, directors, managers, employees, parents,

subsidiaries and affiliates under the provisions of 5 U.S.C. § 8902a(c) or (d); 5 C.F.R. §890.1031 on the basis of any violation actionable under 5 USC § 8902a(c) or (d); or impose financial sanctions under the provisions of 5 U.S.C. § 8902a(d). This agreement does not affect OPM's ability to debar Rite Aid under the provisions of 5 U.S.C. §8902a(b).

14. Specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Rite Aid) are any and all of the following:
- a. Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
 - b. Any criminal liability;
 - c. Except as explicitly released in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
 - d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; or
 - e. Any liability based upon such obligations as are created by this Agreement.

C. MISCELLANEOUS PROVISIONS

15. Rite Aid fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Rite Aid has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.
16. The Settlement Amount that Rite Aid must pay pursuant to this Agreement by electronic transfer pursuant to Paragraph II (A) above will not be decreased as a result of the denial

of claims for payment now being withheld from payment by any Medicare, Medicaid, TMA, or FEHBP carrier or intermediary or any State payer, related to the Covered Conduct; and Rite Aid agrees not to resubmit to any Medicare, Medicaid, TMA, or FEHBP carrier or intermediary or any State Payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

17. Unallowable Costs: Rite Aid agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") §31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations promulgated thereunder) incurred by or on behalf of Rite Aid, in connection with:

- a. the matters covered by this Agreement;
- b. the United States' investigation of the matters covered by this Agreement;
- c. Rite Aid's investigation, defense, and corrective actions undertaken in response to the United States' investigation in connection with the matters covered by this Agreement (including attorney's fees and the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Settlement Agreement);
- d. the negotiation of this Agreement and the CIA; and
- e. the payment made pursuant to this Agreement

are unallowable costs on Government contracts and under Medicare, Medicaid, TMA, the Veterans Affairs Program ("VA") and FEHBP (hereafter, "unallowable costs").

18. Rite Aid will 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 to the Medicare, Medicaid, TMA, VA or FEHBP programs.

19. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any person or entity except those identified in paragraphs II(B)(10)-(13) and (20).
20. Rite Aid agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries, their parents, sponsors, legally responsible individuals or third party payors. Rite Aid waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.
21. The United States and Rite Aid will bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement. Rite Aid represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
22. This Agreement is governed by the laws of the United States. The Parties agree that, should any action be required to enforce or interpret this Agreement, or to resolve any dispute hereunder, the Parties acknowledge and consent to the exclusive jurisdiction of the federal courts and agree that venue for any such action shall be the United States District Court for Eastern District of Pennsylvania except that disputes arising under the CIA incorporated herein by reference shall be resolved exclusively under the dispute resolution provisions set forth in the CIA.
23. This Agreement and the CIA which is incorporated herein by reference constitute the complete agreement between the United States and Rite Aid. This Agreement may not be amended except by written consent of the Parties except that only Rite Aid and OIG-

HHS must agree in writing to modification of the CIA.

24. A separate agreement entitled the "Relators Settlement Agreement," shall address the claims by relators against the United States for a share of the United States' proceeds and against Rite Aid for reasonable expenses pursuant to 31 U.S.C. § 3730(d). In addition, separate agreements between Rite Aid and Participating States have been executed (simultaneously herewith and as a condition to execution of this Agreement and payments hereunder).
25. The undersigned individuals signing this Agreement on behalf of Rite Aid represent and warrant that they are authorized to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.
26. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.
27. The Parties agree that they will execute and deliver all such other documents and instruments as may be necessary and appropriate to effectuate the terms of the Settlement Agreement.
28. This Agreement is effective on the date of signature of the last signatory to the Agreement, and is binding on successors, and transferees, heirs and assigns.
29. All parties consent to the United States' disclosure of this Agreement and information about this Agreement, to the public.
30. Nothing in 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.

UNITED STATES OF AMERICA

DATE

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¹ Covered Conduct also includes allegations in United States ex rel. Altman v. Rite Aid Corporation, et al., Civ. No. 2:96-1005-2 (D.S.C.)(UNDER SEAL) that Rite Aid violated the False Claims Act by knowingly submitting claims to federal health insurance programs for full prescriptions, when those prescriptions were only partially dispensed.