

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between the United States of America, acting through its United States Attorney for the Eastern District of California on behalf of the U.S. Drug Enforcement Administration (United States) and Broadway LTC Pharmacy, Inc., David Carroll, Aldo Angoletta, and Bill Reilly, collectively referred to herein as ("Broadway").

### RECITALS

1. David Carroll is an individual residing within the Eastern District of California and was the Pharmacist in charge at all times relevant to this matter.

2. Aldo Angoletta is an individual residing within the Eastern District of California and was part owner of Broadway LTC Pharmacy, Inc. at all times relevant to this matter.

3. Bill Reilly is an individual residing within the Eastern District of California and was part owner of Broadway LTC Pharmacy, Inc. at all times relevant to this matter.

4. The United States contends that from June 27, 2003 through August 3, 2004, Broadway violated the Comprehensive Drug Abuse Prevention and Control Act, commonly known as the

Controlled Substances Act, Title 21 United States Code Sections 801 et seq. (21 U.S.C. §§ 801 et. seq.), as follows:

a. Broadway failed to indicate whether or not an inventory for controlled substances was taken at the close or beginning of business, in violation of 21 U.S.C. § 827(a)&(b), and Title 21 Code of Federal Regulations (CFR) § 1304.11(a)&(d).

b. Broadway failed to accurately complete DEA Order Form 222 on form number 033844161 documenting Schedule 2 controlled substances in violation of 21 U.S.C. § 828(a) and 21 CFR 1305.09(e), renamed on April 1, 2006 as 1305.13(e).

c. Broadway failed to indicate the date that Schedule 3 - 5 controlled substances were received on 33 invoices in violation of 21 U.S.C. § 827(a)&(b) and 21 CFR 1304.21(a)&(d).

d. Broadway utilized a computer dispensing system which failed to record the date these prescriptions were filled in violation of 21 U.S.C. § 827(a)&(b) and 21 CFR 1304.21(a)&(d).

e. Broadway failed to document destruction of controlled substances leaving inventory in violation of 21 U.S.C. § 827(a)&(b) and 21 CFR 1304.21(a)&(d).

f. Broadway failed to account for returned medications as they were put back into inventory in violation of 21 U.S.C. § 827(a)&(b) and 21 CFR 1304.21(a)&(d).

g. Based on the foregoing, the United States contends that it has certain claims and causes of action against Broadway predicated upon the Controlled Substances Act.

5. Without admission of fault and in the interest of avoiding the delay, uncertainty, and cost of litigation, and pursuant to the terms and conditions stated below, the parties reach a full and final settlement of the claims described in paragraph 4 above.

**TERMS AND CONDITIONS**

**IT IS HEREBY AGREED, BY AND BETWEEN THE PARTIES, as follows:**

6. Broadway shall pay to the United States the sum of \$325,000.00 (Settlement Payment). The Settlement Payment is immediately due and owing as of the date the last signature is executed hereon and shall be paid to the United States by electronic funds transfer within 30 days of receiving transfer instructions from the Financial Litigation Unit, United States Attorney's Office, 501 I Street, Suite 10-100, Sacramento, California 95814.

7. In consideration of Broadway's full and timely performance of all obligations set forth in this Agreement, and subject to Paragraph 11 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Broadway

from any civil claims the United States has or may have under the Controlled Substances Act for the conduct described in paragraph 4 above.

8. Should Broadway fail to make the Settlement Payment as set forth in paragraph 6 above, the United States, at its option may file a civil action for violation of the Controlled Substances Act for the conduct listed in paragraph 4 above. Upon the filing of such action, Broadway shall agree to the entry of a consent judgment against it in the amount of \$325,000. Broadway further agrees not to plead any statute of limitations, laches, or other defenses to such action, and hereby waives any such defenses to such action. The consent judgment referenced in this paragraph shall not limit the United States' ability to proceed against Broadway in such action for judgment according to proof to include additional damages, though Broadway would be entitled to an offset against such judgment for any monies paid to the United States under this paragraph.

9. In consideration of the full and timely payment of the sum agreed upon in paragraph 6 of this Agreement and complete compliance with any and all of the other above-described terms and conditions, the United States waives, releases, and promises to refrain from instituting any civil or administrative claim, action, charge, suit or proceeding arising from the matters set forth in this Agreement.

10. Broadway fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which it has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the investigation, prosecution and settlement of this matter.

11. If, within 91 days of the Effective Date of this Agreement, Broadway commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of Broadway' debts, or seeking to adjudicate Broadway as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Broadway or for all or any substantial part of Broadway's assets, Broadway agrees as follows:

a. Broadway's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Broadway will not argue or otherwise take the position in any such case, proceeding, or action that: (i) Broadway's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) Broadway was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants,

and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Broadway.

b. If Broadway's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Broadway for the claims that would otherwise be covered by the releases provided in paragraphs 7-10, above. Broadway agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that Broadway will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) that Broadway will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding which are brought by the United States after notification to Broadway that the releases herein have been rescinded pursuant to this Paragraph; and (iii) the United States has a valid claim against Broadway in the amount of at least \$325,000.00, and the United States may

pursue its claim in any case, action, or proceeding brought against any or all of the individuals and/or the entity collectively referred to herein as Broadway.

c. Broadway acknowledges that agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

12. Each party acknowledges that nothing in this Agreement is to be construed to prevent the United States from proceeding against Broadway to recover any amounts determined or to be determined to be due and owing the United States arising out of conduct not described in paragraph 4 above.

13. This Agreement shall not be construed as an admission of liability, wrongdoing or guilt on the part of Broadway.

14. Nothing in this Agreement is intended to affect any liability or claims Broadway has or may have under the Internal Revenue laws, Title 26 of the United States Code.

15. Should Broadway subsequently be determined to have violated the terms and conditions of this Agreement, then it shall be liable to the United States for any costs and attorneys' fees incurred by the United States in any action against it for noncompliance with this Agreement.

16. Each party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. This Agreement in all respects has been voluntarily and knowingly executed by the parties on advice and with approval of their respective counsel.

18. Each party acknowledges that it has participated in the drafting and preparation of this Agreement. Each party further agrees that no inference should be drawn against or in favor of any party based on such drafting and preparation.

19. This Agreement shall be construed and enforced under and in accordance with Federal law. Should any judicial action be required to enforce or interpret this Agreement, or to resolve any dispute hereunder, the parties acknowledge that jurisdiction and venue for such action shall lie solely in the United States District Court for the Eastern District of California.

20. This Agreement may be executed in counterparts, each of which shall be considered an original, but such counterparts together shall constitute one and the same Agreement.

21. This Agreement is effective on the date of signature of the last signatory to this Agreement.

22. Each party who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so.

23. This Agreement constitutes the full and complete agreement between the parties, with respect to the matters

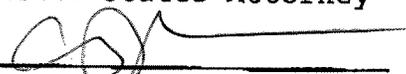
covered herein, and no modification hereof shall be effective unless in writing and signed by the party against which it is sought to be enforced.

For the United States:

DATED: 7/17/07

McGREGOR W. SCOTT  
United States Attorney

By:

  
CATHERINE J. CERNA  
Assistant U.S. Attorney

For Broadway Pharmacy:

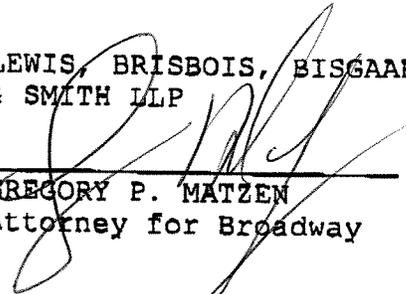
DATED: 6-22-07

 *Davis Carroll, CEO*  
ADD: Name and Title of  
Broadway LTC Pharmacy, Inc.  
signatory

APPROVED AS TO FORM

DATED: 6-4-07

LEWIS, BRISBOIS, BISGAARD  
& SMITH LLP

  
GREGORY P. MATZEN  
Attorney for Broadway

covered herein, and no modification hereof shall be effective unless in writing and signed by the party against which it is sought to be enforced.

For the United States:

DATED: \_\_\_\_\_

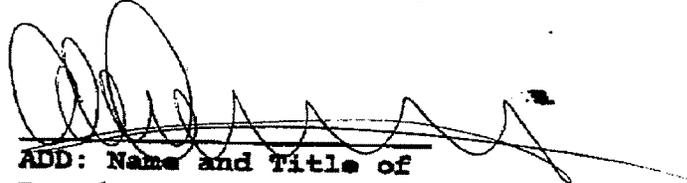
McGREGOR W. SCOTT  
United States Attorney

By: \_\_\_\_\_

CATHERINE J. CERNA  
Assistant U.S. Attorney

For Broadway Pharmacy:

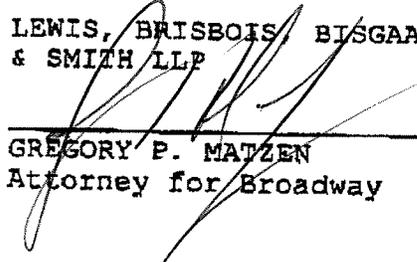
DATED: 07/02/07

  
\_\_\_\_\_  
ADD: Name and Title of  
Broadway LTC Pharmacy, Inc.  
signatory

APPROVED AS TO FORM

DATED: 7/2/07

LEWIS, BRISBOIS, BISGAARD  
& SMITH LLP

  
\_\_\_\_\_  
GREGORY P. MATZEN  
Attorney for Broadway

covered herein, and no modification hereof shall be effective unless in writing and signed by the party against which it is sought to be enforced.

For the United States:

DATED: \_\_\_\_\_

McGREGOR W. SCOTT  
United States Attorney

By:

\_\_\_\_\_  
CATHERINE J. CERNA  
Assistant U.S. Attorney

For Broadway Pharmacy:

DATED: 7/11/07

Bill Reilly GM  
ADD: Name and Title of  
Broadway LTC Pharmacy, Inc.  
signatory

APPROVED AS TO FORM

DATED: \_\_\_\_\_

LEWIS, BRISBOIS, BISGAARD  
& SMITH LLP

\_\_\_\_\_  
GREGORY P. MATZEN  
Attorney for Broadway