

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between the United States of America, Department of Justice ("United States"), through the United States' Attorney's Office for the District of Arizona and the Pima County Board of Supervisors ("Pima County"), (collectively referred to as the "Parties").

In consideration of the mutual covenants and agreements of the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby warrant and agree as follows:

I. EFFECTIVE DATE:

1.1 The effective date of this Agreement is March 20, 2009 ("Effective Date").

II. RECITALS:

2.1 In early 2004, administrators at the Kino Community Hospital Pharmacy ("Kino Hospital") discovered that several dosages of controlled substances were missing from Kino Hospital. In response, Kino Hospital notified the local police and the Drug Enforcement Administration ("DEA"). In addition to notifying the DEA, Kino Hospital contracted a well known pharmacy auditor, to determine the extent of the missing controlled substances. An audit was conducted for the period from May 1, 2002 to April 30, 2004. As a result of the audit and subsequent investigation by the DEA, the United States alleged that Kino Hospital committed several violations of the Controlled Substances Act (the "Act").

2.2 The United States has also alleged that Kino Hospital is subject to a civil penalty as a result of the purported violations of the act.

2.3 In an effort to avoid the expense and uncertainty of any litigation related to the alleged claims by the United States, the Parties have agreed to settle, pursuant to this Agreement, all issues and disputes between them based on claims arising out of the investigation; and all existing or potential claims under the Act. To that end, the Parties have made this Agreement in order to resolve the disputes among them according to the terms, conditions and provisions hereof.

III. WARRANTIES AND REPRESENTATIONS:

3.1 The Parties each expressly represent and warrant that they are authorized to execute this Agreement. This Agreement has been negotiated and drafted jointly by the Parties, and the terms, conditions and provisions of this Agreement shall be construed only according to their fair import and shall not be construed for or against any Party hereto.

IV. TERMS OF SETTLEMENT:

4.1 All of the foregoing "Recitals" and "Warranties and Representations" are incorporated by reference into the "Terms of Settlement" section of this Agreement as though fully set forth herein.

4.2 This Agreement is executed as a compromise of disputed claims, liability for which is expressly denied by the Parties. By this Agreement, the Parties do not admit any wrongdoing or liability, nor do the Parties intend it to be construed as such.

This Agreement is conditioned on Pima County taking the action and associated expenditures set forth in Section 4.3 below.

4.3 Commencing Fiscal Year 2009/2010 ("Commencement Date"), Pima County agrees to establish a drug abuse prevention initiative ("Initiative") and commit to a funding for the initiative in the amount of One Million Dollars (\$1,000,000) ("Initiative Funding"). As part of the Initiative, Pima County will develop three separate anti-drug programs, as described in sections 4.3(a), 4.3(b) and 4.3(c). Pima County, in its sole discretion, will determine the percentage of the \$1,000,000 that will be allocated to each of these programs. The funding for the Initiative is in addition to programs, services and equipment that have already been budgeted by Pima County and shall be a separate line item on Pima County's annual budget for all Fiscal Years covered by this Agreement.

By Fiscal Year End 2013/2014, Pima County shall expend all monies committed to the Initiative. However, the following schedule shall control the minimum yearly expenditures. By June 30th of each year, Pima County shall have expended the following percentage of the Initiative Funding ("Guaranteed Expenditure"):

June 30, 2010	10% of \$1 Million or \$100,000
June 30, 2011	15% of \$1 Million or \$150,000
June 30, 2012	20% of \$1 Million or \$200,000
June 30, 2013	25% of \$1 Million or \$250,000
June 30, 2014	30% of \$1 Million or \$300,000

The Guaranteed Expenditure is a minimum amount required to be expended by Pima County. If in any year the funds over and above the Guaranteed Expenditure are spent by Pima County towards the Initiative, the balance of the Initiative Funding shall be reduced accordingly or, in the alternative, at the option of Pima County, may reduce future yearly Guaranteed Expenditures.

At yearly anniversaries of the Commencement Date until the Agreement terminates, Pima County will submit a report to United States summarizing the actions it has taken pursuant to this Agreement and shall include accounting records and documents evidencing the annual and total combined expenditures for these programs. In the event that the total of \$1,000,000 is not expended within the 60 month period, Pima County agrees to remit the remainder to the United States.

4.3(a) Pima County will finance the development and implementation of an education campaign designed to educate parents and teachers of teenage students in Southern Arizona on the signs and symptoms associated with the abuse of prescription drugs. The education campaign will be developed and implemented in Southern Arizona middle schools and high

schools by the Pima County Department of Health. Pima County shall supervise and maintain the education campaign for a term not to exceed Pima County's expenditure of \$1,000,000.

4.3(b) Pima County will finance the development and operation of an arrestee drug usage data collection program. The purpose of this program is to allow Pima County to track the trends in drug usage. This data will aid in assessing the viability of treatment efforts, law enforcement tactics and general crime analysis. In order to achieve this purpose, Pima County will implement the Arizona Arrestee Reporting Information Network (AARIN), or a similar model, within its jail system. Pima County shall supervise and maintain AARIN, or a similar model, for a term not to exceed Pima County's expenditure of \$1,000,000.

4.3(c) Pima County will finance the development and operation of a drug treatment program to be implemented within the Pima County jail system. The purpose of this program will be to provide immediate access to drug treatment for Pima County inmates on a voluntary basis. Pima County shall supervise and maintain such drug treatment program for a term not to exceed Pima County's expenditure of \$1,000,000.

4.4 In consideration of the terms, conditions and mutual releases contained in this Agreement, and conditioned on Pima County's compliance with the terms set forth in Section 4.3, the United States, for themselves, their officers, agents, employees, successors and assigns fully release and forever discharge Pima County, their officers, agents, employees, successors and assigns from and against any and all liabilities, claims, demands, administrative complaints, causes of action and suits that the United States has or may have, of whatever kind and nature, known or unknown, related to any civil claims and causes of action under 21 U.S.C § 842 against Pima County for the alleged violations of the Act, and the regulations promulgated thereunder, during the period of May 1, 2002 and April 30, 2004.

4.5 In consideration of the terms, conditions and mutual releases contained in this Agreement, Pima County, for themselves, their officers, agents, employees, successors and assigns fully release and forever discharge the United States, their officers, agents, employees, successors and assigns from and against any and all liabilities, claims, demands, administrative complaints, causes of action and suits that Pima County has or may have, of whatever kind and nature, known or unknown, related to any claims and causes of action that could have been, asserted in counter to the claims of the United States or that otherwise arise from or relate to the alleged violations of the Act.

4.6 The Parties hereby waive the benefits of any provisions of the law of Arizona, or any other state of the United States which provides that a general release does not extend to claims which the Party does not know or expect to exist in its favor at the time of executing the Release, which if known to him may have materially affected the settlement. It is the intention of the Parties to forever discharge and release known and unknown, present and future claims within the scope of the releases set forth herein. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT A PORTION OF THE CONSIDERATION BEING GIVEN UNDER THIS AGREEMENT IS IN CONSIDERATION FOR THE RELEASE OF CLAIMS AND INJURIES THE NATURE, EXTENT AND AMOUNT OF WHICH ARE NOT, AND DESPITE REASONABLE DILIGENCE COULD NOT NOW BE, KNOWN ("UNKNOWN CLAIMS") AND THAT, ANY PRINCIPLE OR RULE OF LAW TO THE CONTRARY, THE INTENT AND AGREEMENT OF THE PARTIES IS THAT ANY AND ALL UNKNOWN CLAIMS ARE AND SHALL BE RELEASED BY VIRTUE OF THE FOREGOING PROVISIONS OF

THIS AGREEMENT. Nothing in this Agreement shall prevent, preclude, limit, or prejudice the United States' right to enforce the Act and regulations promulgated thereunder by commencing a civil or administrative action against Kino Hospital or any of its divisions, affiliates, successors or assigns for violations of the Act which occur after the dates alleged in this Agreement.

4.7 In the event Pima County does not comply with the terms of this Agreement as set forth in Section 4.3, it shall be in default of this Agreement. In that event, the United States may exercise, at its sole option, one or more of the following rights: (a) declare this Agreement null and void and avail itself of any and all claims, rights or actions which it may have under the Act against any entity for the conduct alleged in this Agreement including, but not limited to, claims against Pima County, its successors, assigns or predecessors; (b) file an action for specific performance of the terms of this Agreement against Pima County or its successors or assigns; and/or (c) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or equity. Pima County agrees that it 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 within ninety (90) calendar days of written notification to Pima County of default, except to the extent such defenses were available on the Effective Date.

4.8 The Parties agree that each of them shall take such further action and execute such further documents, if any, which may be necessary or appropriate to implement this Agreement according to its terms.

4.9 If, after the Effective Date of this Agreement, any provision hereof is held to be illegal, invalid or unenforceable, such provision shall be fully severable, and the remainder of the Agreement shall remain enforceable and not affected thereby.

4.10 This Agreement is not intended by the Parties, and shall not be interpreted to constitute, a release of any person or entity not identified or referred to herein.

4.11 This Agreement shall not be altered, modified or amended except by written agreement signed by the Parties.

4.12 With respect to its subject matter, including without limitation all matters incorporated herein by reference, this Agreement is a complete integration and final expression of the Parties' rights and duties, and there are no other agreements or understandings between the Parties to the contrary.

4.13 In the event of any conflict, claim or dispute between the Parties affecting or relating to the subject matter of this Agreement, the prevailing Party shall be entitled to receive from the non-prevailing Party all reasonable expenses, including but not limited to attorneys' fees and costs. Costs and attorneys' fees shall be assessed by the court and not by a jury and shall be included in any judgment obtained by the prevailing Party.

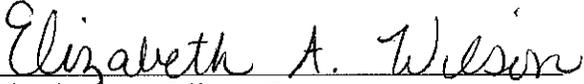
4.14 This Agreement may be executed in any number of counterparts; all counterparts are deemed to constitute one and the same instrument, and each counterpart is deemed to be an original of that instrument.

4.15 This Agreement shall be governed by the laws of the United States and the State of Arizona. Exclusive jurisdiction and venue for any dispute arising under this Agreement shall be the United States District Court for the District of Arizona.

4.16 This Agreement is effective on the date of signing by the last signatory of this Agreement. Facsimiles of signatures shall have the same effect as originals.

DIANE J. HUMETEWA
United States Attorney
District of Arizona

DATED: 3/20/09


Elizabeth A. Wilson, Esq.
Assistant United States Attorney
*Attorneys for United States Drug
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DATED: 3/19/09


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