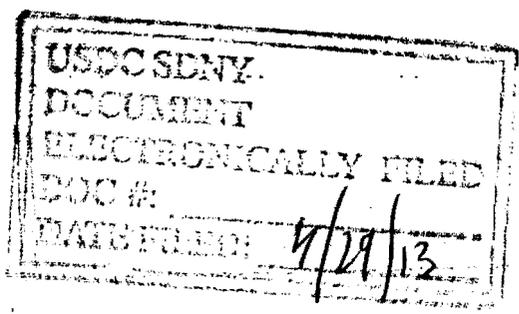


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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
-- v. --	:
	:
	:
MADISON AVENUE PHARMACY and	:
RICHARD SCHIRRIPA	:
	:
Defendants.	:
-----	x

12 Civ. 1602 (MHD)

CONSENT ORDER

WHEREAS, on or about March 12, 2012, the United States of America (the "United States"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, commenced the above-captioned action by filing a complaint in this Court against Madison Avenue Pharmacy (the "Pharmacy") and Richard Schirripa ("Schirripa" and collectively, "Defendants");

WHEREAS, on or about January 22, 2013, the United States filed an amended complaint in this Court (the "Complaint") against the Defendants;

WHEREAS, at all times relevant to the Complaint, the Pharmacy was a retail pharmacy that distributed substances classified as "Schedule II" controlled

substances under the Controlled Substances Act, as amended, 21 U.S.C. §§ 801 *et seq.* ("CSA");

WHEREAS, at all times relevant to the Complaint, Schirripa was a licensed pharmacist and the sole owner of the Pharmacy;

WHEREAS, the Complaint alleges that Defendants committed numerous violations of the CSA and its regulations, 21 C.F.R. §§ 1301 *et seq.* (the "implementing regulations");

WHEREAS, the United States and Defendants desire to avoid further litigation;

NOW, THEREFORE, it is hereby ORDERED as follows pursuant to 21 U.S.C. §§ 842(c)(1) and 843(f):

1. Schirripa and the Pharmacy admit, acknowledge, and accept responsibility for the following violations of the Controlled Substances Act:
 - a. Between February 2007 and July 2009, Schirripa allowed dispensing pharmacists at the Pharmacy to order Schedule II controlled substances electronically using Schirripa's private access key, rather than requiring them to obtain and use their own keys; this private access key was subsequently self-revoked by Schirripa at the instruction of the DEA, for a period of 2 months;
 - b. Between February 2007 and July 2009, Schirripa and the Pharmacy did not utilize the relevant software to electronically reconcile orders of Schedule II controlled substances;

- c. At the time of the DEA's July 2009 audit of the Pharmacy, Schirripa and the Pharmacy were not maintaining a complete and accurate record of the Pharmacy's supply of Oxycontin;
- d. In 2009, Schirripa and the Pharmacy failed to timely conduct a biennial inventory, instead conducting the inventory two months late after notice from the United States Drug Enforcement Agency ("DEA");
- e. In 2009, having learned of a loss of Oxycontin at the Pharmacy, Schirripa notified the DEA; however, the reporting of the loss to the DEA was not timely, in violation of the CSA;
- f. In 2009, Schirripa did not utilize the relevant software to produce the electronic DEA Form 222 order forms when so requested by the DEA.

2. Schirripa shall pay \$200,000 to the United States (the "Settlement Amount"). The Settlement Amount shall be paid on the following terms: (i) the first payment, in the amount of \$65,000, shall be made within 60 days of the entry of this Consent Order; and (ii) the second, third, and fourth payments, each in the amount of \$45,000, shall be made on or before July 1 of each subsequent year, starting on July 1, 2014. Schirripa shall make payments of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of New York.

3. Schirripa shall have the right to pre-pay the entire balance due without penalty and may tender payments in amounts greater than those stipulated in paragraph 2.

4. In the event the Settlement Amount is not paid in full in accordance with the terms set forth in Paragraph 2 above, Schirripa and the Pharmacy shall agree to the entry of a Consent Judgment in the amount of one and half times (*i.e.*, 150%) the unpaid balance. Additionally, the United States, at its option, also may: (a) rescind this Consent Order and reinstate the Complaint filed in this action as to the Defendant or seek specific performance of this Consent Order; (b) offset the remaining unpaid balance from any amounts due and owing the Defendants by any department, agency or agent of the United States at the time of default; or (c) exercise any other rights granted by law, or under the terms of this Consent Order, or recognizable at common law or in equity.

5. Within 30 days of the entry of this Consent Order, Schirripa shall hire or otherwise retain a Compliance Officer for the Pharmacy, who shall be pre-approved by the DEA. The Compliance Officer shall serve for a minimum of five years, and shall monitor the Pharmacy's compliance with all provisions of the CSA and its implementing regulations. In the event that the Compliance Officer fails to perform these duties for any reason or otherwise ceases employment with the Pharmacy, Schirripa shall retain a replacement, pre-approved by the DEA, within 30 days.

6. Within 60 days of the entry of this Consent Order, Schirripa shall implement at the Pharmacy a comprehensive compliance plan, which shall have

been drafted by Schirripa and the Compliance Officer and pre-approved by the DEA. Schirripa shall personally ensure the execution of all aspects of the Compliance Plan for a minimum of five years.

7. Within 30 days of the entry of this Consent Order, Schirripa shall provide all pharmacists and related support staff employed by the Pharmacy with a copy of this Consent Order, and within 60 days of the entry of this Consent Order Schirripa shall provide all pharmacists and related support staff with a copy of the Compliance Plan.

8. Within 60 days of the entry of this Consent Order and every six months thereafter for a period of five years, Schirripa shall voluntarily submit a report to the DEA that contains, at a minimum, (1) an inventory of all Schedule II controlled substances in stock at the Pharmacy, and (2) a certification by Schirripa and the Compliance Officer that Defendants are adhering to all provisions of the CSA and its implementing regulations.

9. Defendants shall voluntarily submit to DEA audits in accordance with C.F.R. § 1316.03 and C.F.R. § 1316.08 at any time without condition and without advance notice.

10. Subject to the exceptions in Paragraphs 11 and 12 below, in consideration of the obligations set forth in this Consent Order, and conditioned upon Defendants' payment in full of the Settlement Amount and full compliance with Paragraphs 1-9 above, the United States (on behalf of itself and its agencies, departments, officers, employees, servants and agents) agrees to release Defendants

from any civil claim or administrative monetary claim that the United States has or may have under the CSA, arising out of the allegations asserted in the Complaint.

11. This Consent-Order is intended to be for the benefit of the United States and Defendants only; by this instrument the parties to this Consent Order do not release any claims against any other person or entity.

12. Notwithstanding any term of this Consent Order, including the release provided in Paragraph 10, any and all of the following are specifically reserved and excluded from the scope and terms of this Consent Order as to any entity or person:

- a. any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Consent Order, any administrative liability, including suspension or debarment from participating in transactions with the United States;
- d. any liability to the United States (or its agencies) for any conduct other than that alleged in the Complaint;
- e. any claims based upon such obligations as are created by this Consent Order; and
- f. any liability to the United States of any entity or person that or who is not released by the terms of this Consent Order.

13. In the event of a criminal prosecution or administrative action relating to the allegations asserted in the Complaint, Defendants waive and will not assert any defenses they may have 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 Consent Order bars a remedy sought in such criminal prosecution or administrative action.

14. Nothing in this Consent Order constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Code, Title 26 of the United States Code.

15. The Court will retain jurisdiction over the enforcement and interpretation of this Consent Order and to resolve all disputes arising hereunder.

16. The undersigned signatories represent that they are fully authorized to enter into this Consent Order and to execute and legally bind the parties they represent to the terms of this Consent Order.

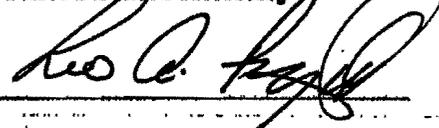
17. This Consent Order contains the entire agreement between Defendants and the United States with respect to the subject matter of the Complaint. No prior agreements, oral representations or statements shall be considered part of this Consent Order.

For Madison Avenue Pharmacy
and Richard Schirripa:

For the United States of America: 4/29/2013

PREET BHARARA
United States Attorney

By: 

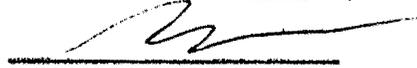
By: 

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Richard Schirripa

SO ORDERED ON THIS 29th DAY OF April, 2013:


**HON. MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE**