



**U.S. Department of Justice**

***Michael J. Sullivan***  
*United States Attorney*  
*District of Massachusetts*

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Main Reception: (617) 748-3100

*John Joseph Moakley United States Courthouse*  
*1 Courthouse Way*  
*Suite 9200*  
*Boston, Massachusetts 02210*

August 24, 2006

Brien T. O'Connor  
Ropes & Gray  
One International Place  
Boston, MA 02110

**Re: United States v. Schering Sales Corporation**

Dear Mr. O'Connor:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts ("U.S. Attorney") and the United States Department of Justice (collectively, the United States Department of Justice and the U.S. Attorney will be referred to as the "United States"), and your client, Schering Sales Corporation ("Schering Sales"), a Delaware Corporation and a subsidiary of Schering-Plough Corporation (collectively referred to as "the Parties"), as follows:

1. Entry of Plea

At the earliest practicable date, Schering Sales shall waive indictment and plead guilty to the one-count Information attached hereto as Exhibit A. The Information charges that, from in or about April 1998 through August, 2001, Schering Sales violated 18 U.S.C. § 371 by conspiring with others to knowingly and willfully make false statements to the government, to wit (a) to the Health Care Financing Administration ("HCFA") regarding the reported best price for Claritin Redi-Tabs, and (b) to the Food and Drug Administration ("FDA") to avoid scrutiny of its off-label marketing of Temodar and Intron A. Schering Sales expressly and unequivocally admits that it knowingly, intentionally and willfully committed the crime charged in the attached Information and is in fact guilty of the offense, and agrees that it will not make any statements inconsistent with this explicit admission. Schering Sales agrees to waive venue, any applicable statutes of limitations, and any legal or procedural defects in the Information.

2. Penalties

With respect to the count of conviction, the Defendant Schering Sales is subject to a maximum possible fine of \$500,000, twice the gross gain derived from the offense or twice the gross loss to a person other than the defendant, whichever is greatest. *See* 18 U.S.C. §§ 3571(c), (d). The gross gain resulting from the offense is \$128,571,000, and thus the maximum possible fine is \$257,142,000.

With respect to the single count, the Defendant Schering Sales may be sentenced to a term of probation of not less than one (1) year and not more than five (5) years. *See* 18 U.S.C. § 3561(c)(1).

With respect to the single count, the Defendant Schering Sales shall pay a special assessment of \$400. *See* 18 U.S.C. § 3103(a)(2)(B).

3. Sentencing Guidelines

The parties agree that the following provisions of the United States Sentencing Guidelines (“U.S.S.G.”) apply to the sentencing of Schering Sales with respect to the Information:

- a. The parties agree that the Guideline Manual in effect as of November 1, 2000, should be used in determining Defendant's sentence. *See* U.S.S.G. §§ 1B1.11(a) and (b)(1) (Nov. 1, 2000 and Nov. 1, 2005).
- b. The parties agree that the base fine is \$128,571,000, which is the pecuniary gain to the organization from the offense. *See*, U.S.S.G. §§ 8C2.3 and 8C2.4(a) (Nov. 1, 2000).
- c. Pursuant to U.S.S.G. § 8C2.5 (Nov. 1, 2000), the culpability score is 7 as determined as follows:
  - (1) Base culpability score is five (5) pursuant to U.S.S.G. § 8C2.5(a) (Nov. 1, 2000);
  - (2) Add four (4) points pursuant to U.S.S.G. §§ 8C2.5(b)(2)(B) (Nov. 1, 2000), in that the unit of the organization within which the offense was committed had 1,000 or more employees, and an individual within the high-level personnel of the unit participated in or condoned the offense;
  - (3) Deduct two (2) points pursuant to U.S.S.G. § 8C2.5(g)(2) (Nov. 1, 2000).

- d. Pursuant to U.S.S.G. § 8C2.6 (Nov. 1, 2000), the appropriate multiplier range associated with a culpability score of 7 is 1.4 to 2.8.
- e. Thus, the Guideline Fine Range is \$179,999,400 to \$257,142,000. *See*, U.S.S.G. § 8C2.7(a) and (b)(Nov. 1, 2000); 18 U.S.C. §§ 3571(c),(d).
- f. The parties agree that (1) disgorgement pursuant to U.S.S.G. § 8C2.9 is not necessary, (2) there is no basis for a downward departure or deviation under the U.S.S.G. and (3) a fine within the guideline range will result in a reasonable sentence taking into consideration all of the factors set forth in 18 U.S.C. §§ 3553(a), 3572.

4. Agreed Disposition

The United States and Schering Sales agree pursuant to Fed. R. Crim. P. 11(c)(1)(C) that the following sentence is the appropriate disposition of the Information:

- a. a criminal fine in the amount of one hundred eighty million dollars (\$180,000,000) to be paid within one week of the date of sentencing; and
- b. a mandatory special assessment of \$400 pursuant to 18 U.S.C. ' 3013, which shall be paid to the Clerk of Court on or before the date of sentencing; and
- c. In light of [redacted]. . . the Civil Settlement Agreement between Schering-Plough Corporation, Schering Sales Corporation and the United States [redacted] . . .which is being signed contemporaneously with this plea agreement, and attached hereto as Exhibit B, which requires the payment of \$255,025,089.60 plus interest, the parties agree that the complication and prolongation of the sentencing process that would result from an attempt to fashion a proper restitution order outweighs the need to provide restitution to the victims in this case, where, as here, the loss suffered . . . [redacted] will be recompensed fully [redacted]. . . pursuant to the Civil Settlement Agreement [redacted] . . .

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Therefore, the United States agrees that it will not seek a separate restitution order as to Schering Sales as part of the resolution of the Information and the Parties agree that the appropriate disposition of this case does not include a restitution order.

The United States may, at its sole option, be released from its commitments under this Agreement, including, but not limited to, its agreement in this paragraph regarding the appropriate disposition of this case, if at any time between its execution of this Agreement and sentencing, Schering Sales:

- i. Fails to admit a complete factual basis for the plea;
- ii. Fails to truthfully admit its conduct in the offense of conviction;
- iii. Falsely denies, or frivolously contests, relevant conduct for which Schering Sales is accountable under U.S.S.G. § 1B1.3;
- iv. Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Schering Sales is accountable under U.S.S.G. § 1B1.3;
- v. Engages in acts which form a basis for finding that Schering Sales has obstructed or impeded the administration of justice under U.S.S.G. § 3C1.1; and/or
- vi. Attempts to withdraw its plea.

Schering Sales expressly understands that it may not withdraw its plea of guilty, unless the Court rejects this Agreement under Fed. R. Crim. P. 11(c)(5).

5. No Further Prosecution of Schering Sales

Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States agrees that, other than the charges in the attached Information, it shall not further prosecute Schering Sales for conduct which (a) falls within the scope of the Information; (b) was a subject of the investigation by the grand jury; or (c) was known to the U.S. Attorney prior to the date of execution of this letter. This declination is expressly contingent on:

- (1) the guilty plea of Schering Sales being accepted by the Court and not withdrawn; and
- (2) Schering Sales' performance of all of its material obligations as set forth in this Agreement and the attached Civil Settlement Agreement. If Schering Sales' guilty plea is not accepted by the Court or is withdrawn for any reason, or if Schering Sales should fail to perform a material obligation under this Agreement or the Civil Settlement Agreement, this declination of prosecution shall be null and void.

The United States expressly reserves the right to prosecute any individual, including but

not limited to present and former officers, directors, employees, and agents of Schering Sales, in connection with the conduct encompassed by this plea agreement, within the scope of the grand jury investigation, or known to the U.S. Attorney.

6. Payment of Mandatory Special Assessment

Schering Sales agrees to pay the mandatory special assessment to the Clerk of Court on or before the date of sentencing.

7. Cooperation

Schering Sales shall cooperate completely and truthfully in any trial or other proceeding arising out of any ongoing federal grand jury investigation of its current and former officers, agents, and employees. Schering Sales shall make reasonable efforts to facilitate access to, and to encourage the cooperation of, its current and former officers, agents, and employees for interviews sought by law enforcement agents, upon request and reasonable notice. Schering Sales shall also take reasonable measures to encourage its current and former officers, agents, and employees to testify truthfully and completely before any grand jury, and at any trial or other hearing, at which they are requested to do so by any government entity.

In addition, Schering Sales shall furnish to law enforcement agents, upon request, all documents and records in its possession, custody or control relating to the conduct that is within the scope of any ongoing grand jury investigation, trial or other criminal proceeding in the District of Massachusetts, and that are not covered by the attorney-client privilege or work product doctrine.

Provided, however, notwithstanding any provision of this Agreement, that: (1) Schering Sales is not required to request of its current or former officers, agents, or employees that they forego seeking the advice of an attorney nor that they act contrary to that advice; (2) Schering Sales is not required to take any action against its officers, agents, or employees for following their attorney's advice; and (3) Schering Sales is not required to waive any privilege or claim of work product protection except to the extent set forth in the succeeding paragraph.

The above paragraph notwithstanding, Schering Sales specifically agrees to waive any attorney-client privilege regarding the decision to provide nominally priced Claritin RediTabs to the HMO referenced in the Information in 2000, and to terminate that arrangement in 2001.

8. Probation Department Not Bound By Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the United States Probation Office.

9. Fed. R. Crim. P. 11(c)(1)(C) Agreement

Schering Sales' plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(C). Schering Sales cannot withdraw its plea of guilty unless the sentencing judge rejects this Agreement or fails to impose a sentence consistent herewith. If the sentencing judge rejects this Agreement or fails to impose a sentence consistent herewith, this Agreement shall be null and void at the option of either the United States or Schering Sales.

Schering Sales may seek sentencing by the Court immediately following the Rule 11 plea hearing. The United States does not object to the Court sentencing Schering Sales immediately following the Rule 11 plea hearing or prior to the completion of a Presentence Report. Schering Sales understands that the decision whether to proceed immediately following the plea hearing with the sentencing proceeding, and to do so without a Presentence Report, is exclusively that of the United States District Court.

10. Civil and Administrative Liability

By entering into this Agreement, the United States does not compromise any civil or administrative liability, including but not limited to any False Claims Act or tax liability which Schering Sales may have incurred or may incur as a result of its conduct and its plea of guilty to the attached Information.

Schering Sales' civil liability to the United States in connection with certain of the matters under investigation by the United States is resolved in the Civil Settlement Agreement, attached as Exhibit B, according to the terms set forth in that Agreement.

11. Waiver of Defenses

If Schering Sales' guilty plea is not accepted by the Court for whatever reason, or is later withdrawn for whatever reason, Schering Sales hereby waives, and agrees it will not interpose, if charges are filed within six months of the date on which such guilty plea is rejected or withdrawn, any defense to any charges brought against it which it might otherwise have for pre-indictment delay, any statute of limitations, or the Speedy Trial Act, except any such defense that Schering Sales may already have for conduct occurring before February 5, 1998, as further described in subparagraphs (a) through (f) of paragraph one of the parties' July 31, 2006 tolling agreement, attached hereto as Exhibit C.

12. Breach of Agreement

If the U.S. Attorney determines that Schering Sales has failed to comply with any material provision of this Agreement, the United States may, at its sole option, be released from its commitments under this Agreement in its entirety by notifying Schering Sales, through counsel or otherwise, in writing. The United States may also pursue all remedies available under the law,

even if it elects not to be released from its commitments under this Agreement. Schering Sales recognizes that no such breach by Schering Sales of an obligation under this Agreement shall be grounds for withdrawal of its guilty plea. Schering Sales understands that should it breach any material provision of this Agreement, the U.S. Attorney will have the right to use against Schering Sales before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which may be made by Schering Sales, and any information, materials, documents or objects which may be provided by it to the government subsequent to this Agreement, without any limitation.

Schering Sales understands and agrees that this 11(c)(1)(C) plea agreement and its agreed upon criminal disposition:

- a. are wholly dependent upon Schering Sales' timely compliance with the material provisions of the attached Civil Settlement Agreement, including the requirement in the agreement that Schering Sales pay to the United States, to the various state Medicaid Programs, and the PHS entities, as defined in the Civil Settlement Agreement, the amount of two hundred fifty five million twenty five thousand eighty nine dollars and sixty cents (\$255,025,089.60), plus interest to the United States and the various state Medicaid Programs at the average trust fund rate of 4.292% per annum (\$29,527 per day) from July 27, 2005 and continuing until and including the day before complete payment is made in accord with the terms of the Civil Settlement Agreement; and that
- b. failure by Schering Sales to comply fully with the material terms of this Agreement or the attached Civil Settlement Agreement will constitute a breach of this Agreement, provided however, that a breach of the Corporate Integrity Agreement and Addendum thereto (collectively "CIA"), incorporated by reference in the Civil Settlement Agreement, does not constitute a breach of this Plea Agreement, and any disputes arising under the CIA shall be resolved exclusively through the dispute resolution provisions of the CIA.

In the event Schering Sales at any time hereafter breaches any material provision of this Agreement, Schering Sales understands that (1) the United States will as of the date of that breach be relieved of any obligations it may have in this Agreement and the attached Civil Settlement Agreement, including but not limited to the promise not to further prosecute Schering Sales as set forth in paragraph 5 of this Agreement; and (2) Schering Sales will not be relieved of its obligation to make the payments set forth in this Agreement and the attached Civil Settlement Agreement, nor will it be entitled to return of any monies already paid. Moreover, in the event of a material breach, Schering Sales, with respect to any charges which could have been brought as of August 17, 2006, hereby waives, and agrees it will not interpose, any defense to any additional charges brought against it which it might otherwise have for pre-indictment delay, any statute of limitations, or the Speedy Trial Act, except any such defense that Schering Sales may already have for conduct occurring before February 5, 1998.

13. Corporate Authorization

Schering Sales' acknowledgment of this Agreement and execution of this Agreement on behalf of the corporation is attached as Exhibit D. Schering Sales shall provide to the U.S. Attorney and the Court a certified copy of a resolution of the Board of Directors of Schering Sales Corporation, affirming that the Board of Directors has authority to enter into the Plea Agreement and has (1) reviewed the Information in this case and the proposed Plea Agreement or have been advised of the contents thereof; (2) consulted with legal counsel in connection with the matter; (3) voted to enter into the proposed Plea Agreement; (4) voted to authorize Schering Sales to plead guilty to the charges specified in the Information; and (5) voted to authorize the corporate officer identified below to execute the Plea Agreement and all other documents necessary to carry out the provisions of the Plea Agreement. A copy of the resolution is attached as Exhibit E. Schering Sales agrees that either a duly authorized corporate officer or a duly authorized attorney for Schering Sales, at the discretion of the Court, shall appear on behalf of Schering Sales and enter the guilty plea and will also appear for the imposition of sentence.

14. Who Is Bound By Agreement

This Agreement is binding upon Schering Sales and the Attorney General of the United States, the United States Department of Justice, and all United States Attorneys on the matters set forth above in Paragraph 5, but does not bind the Tax Division of the U.S. Department of Justice or the Internal Revenue Service of the U.S. Department of the Treasury. A copy of the letter to United States Attorney Michael Sullivan from John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice, authorizing this Agreement is attached as Exhibit F. Schering Sales understands that this Agreement does not bind any state or local prosecutive authorities.

15. Complete Agreement

This Agreement, together with the Civil Settlement Agreement, set forth the complete and only agreement between the Parties relating to the disposition of this matter. No promises, representations, agreements or conditions have been entered into other than those set forth in this letter and its attachments A through F. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral. This Agreement can be modified or supplemented only in a written memorandum signed by the Parties or as agreed by the Parties on the record in court.

If this letter accurately reflects the Agreement entered into between the United States and your client Schering Sales, please have the authorized representative of Schering Sales sign the Acknowledgment of Agreement below. Please also sign as Witness. Return the original of this

letter to Assistant U.S. Attorney Susan Winkler of the United States Attorney's Office of the District of Massachusetts.

Very truly yours,

By: 

MICHAEL J. SULLIVAN  
United States Attorney  
District of Massachusetts

By: 

SUSAN WINKLER  
Assistant U.S. Attorney  
District of Massachusetts

ACKNOWLEDGMENT OF AGREEMENT

The Board of Directors has authorized me to execute this Plea Agreement on behalf of Schering Sales Corporation. The Board has read this Plea Agreement, the attached criminal Information, and the Civil Settlement Agreement including its attachment in their entirety, or has been advised of the contents thereof, and has discussed them fully in consultation with Schering Sales Corporation's attorneys. I am further authorized to acknowledge on behalf of Schering Sales Corporation that these documents fully set forth Schering Sales Corporation's agreement with the United States, and that no additional promises or representations have been made to Schering Sales Corporation by any officials of the United States in connection with the disposition of this matter, other than those set forth in these documents.

Dated:

8/25/06



BRENT SAUNDERS  
President  
Schering Sales Corporation

Dated:

8/25/06



BRIAN T. O'CONNOR  
JOAN McPHEE  
JOSHUA LEVY  
Ropes & Gray  
Counsel for Schering Sales Corporation