

1 BENJAMIN B. WAGNER
United States Attorney
2 KURT A. DIDIER
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
5 Attorneys for Plaintiff
United States of America
6

7 IN THE UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
9

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 v.
13 SUWONNEE PONGNORSING; AND
WESTSIDE PLAZA PHARMACY,
14 Defendants.
15

CASE NO. 2:13-CV-02230-GEB-CKD
**SETTLEMENT AGREEMENT AND RELEASE;
ORDER**

16
17 The Parties, through their authorized representatives, hereby agree to resolve this action as set
18 forth below.

19 I. BACKGROUND

20 1. Defendant Suwonnee Pongnorsing is the owner, operator and pharmacist-in-charge of
21 defendant Westside Plaza Pharmacy, a retail pharmacy located in Modesto, California. The pharmacy
22 serves a variety of patients' needs, including dispensing prescription drugs subject to the Comprehensive
23 Drug Abuse Prevention and Control Act, also known as the Controlled Substances Act, 21 U.S.C. §§
24 801 *et seq.*) and its implementing regulations ("the CSA").

25 2. Defendants Suwonnee Pongnorsing and Westside Plaza Pharmacy ("Defendants") must
26 conduct Westside Plaza's pharmaceutical operations in accordance with the CSA.
27

1 the complaint's allegations—summarized as the Covered Conduct above—and agree to settle this matter
2 pursuant to this Agreement's terms and conditions.

3 **II. TERMS AND CONDITIONS**

4 7. In consideration of the mutual promises, covenants and obligations of this Agreement,
5 and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,
6 the Parties hereby agree as follows:

7 A. Entry of Judgment. Defendants consent to entry of judgment in favor of the
8 United States in the amount of three hundred fifty thousand dollars (\$350,000) (the "Judgment
9 Amount"). Defendants have reviewed and "approved as to form and content" the judgment lodged with
10 the Court and shall satisfy the Judgment Amount via the payment plan set forth below.

11 B. Judgment Enforcement and Satisfaction. The United States will record abstracts
12 of judgment in the counties where Defendants have, or may interests in real property. Other than
13 recording abstracts of judgment, the United States agrees that it will not seek to enforce its judgment
14 provided Defendants comply with this Agreement's terms. Upon Defendants' fulfillment of the
15 Agreement, the United States will file a satisfaction of judgment with the Court.

16 C. Payments. Defendants shall pay to the United States \$350,000, plus 2% annual
17 interest, in the following installments:

18 (1) \$55,000 at the time this Agreement is executed, via electronic funds transfer
19 and pursuant to written instructions the United States will provide separately;

20 (2) \$45,000 within 90 days from the date the Agreement is executed; and

21 (3) Thereafter, but no later than April 1, 2014, Defendants shall pay to the United
22 States the sum of \$12,500 every successive quarter, no later than the first day of the quarter, plus
23 interest, until paid in full. An amortization schedule is attached hereto as Appendix "A."

24 D. Method of Payment. Defendants' initial payment of \$55,000 (or any future payment
25 exceeding \$50,000) shall be via electronic funds transfer. All other payments may be electronic funds or
26 certified check. The payee for all payments is the **United States Department of Justice**, with a
27

1 delivery address to the United States Attorney's Office, Attention: Financial Litigation Unit (FLU), 501
2 I Street, Suite 10-100, Sacramento, CA 95814.

3 E. Reduced Judgment. The United States agrees to reduce the judgment amount to
4 \$325,000 (plus any interest due) from \$350,000 provided Defendants complete the payment installment
5 plan within three years; i.e., by October 1, 2016.

6 F. Default. Defendants agree that if they default in the payment of the Judgment
7 Amount stated in paragraph 7A, above, the United States may declare any remaining unpaid balance
8 immediately due plus a ten percent (10%) surcharge thereon. The United States shall notify Defendants
9 of a default in accordance with paragraph 7G, below, and may, thereafter, without further notice to
10 Defendants, proceed to enforce the judgment to collect the unpaid balance and surcharge. The 10%
11 surcharge is to compensate the United States for its court costs, expenses and attorneys' fees associated
12 with enforcing this Agreement.

13 G. Written Notice. Except as required elsewhere in this Agreement or its Appendix,
14 whenever written notice is required, the notice shall be addressed and mailed to the individuals
15 identified below, unless those individuals or their successors give notice, in writing, of a change of
16 address to the other party.

17 To Defendants Suwonnee Pongnorsing or Westside Plaza Pharmacy:

18 Peter S. Gregorovic, Esq.
19 Frederickson, Mazeika & Grant, LLP
20 5720 Oberlin Drive
21 San Diego, CA 92121
22 Tel: 858-642-2002
23 Fax: 858-642-2001

24 and

25 To the United States:

26 Kurt A. Didier
27 Assistant United States Attorney
28 United States Attorney's Office
Eastern District of California
501 I Street, Suite 10-100
Sacramento, CA 95814
Tel: 916-554-2750
Fax: 916-554-2900

1 United States rescinds the releases in this Agreement, Defendants shall be relieved of all obligations
2 under the Agreement including any remaining payments due pursuant to paragraph 7.

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

5 17. Each Party warrants that it has been represented by, and has sought and obtained the
6 advice of independent legal counsel with regard to the nature, purpose, and effect of this Agreement.
7 The Parties hereby declare that the terms of this Agreement have been completely read, fully
8 understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.
9 Nothing in this provision creates a waiver of the attorney client privilege.

10 18. Each Party warrants and represents that it is freely and voluntarily entering into this
11 Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all
12 relevant information and data by its legal counsel. Each Party further warrants and represents that no
13 other party or its representative has made any promise, representation or warranty, express or implied,
14 except as expressly set forth in this Agreement, and that each party has not relied on any inducements,
15 promises, or representations made by any Party to this Agreement, or its representatives, or any other
16 person, except as expressly set forth herein.

17 19. This Agreement was negotiated by the Parties and their respective counsel, each of whom
18 had the opportunity to participate in the drafting thereof. It is therefore the intent of the Parties that the
19 words of this Agreement shall be construed as a whole so as to effect their fair meaning and not for or
20 against any party, the Parties having waived the benefit of California Civil Code § 1654 and similar
21 laws.

22 20. This Agreement shall be governed by the laws of the United States. If a dispute arises
23 under the Agreement, exclusive jurisdiction and venue shall lie in the United States District Court for
24 the Eastern District of California, and to the extent that state law applies to the dispute, California law
25 shall apply.

1 FOR DEFENDANTS WESTSIDE PLAZA PHARMACY AND SUWONNEE PONGNORSING:

2
3 Dated: October __, 2013

By: _____
SUWONNEE PONGNORSING
Owner, Westside Plaza Pharmacy

4
5
6 Dated: October __, 2013

By: _____
SUWONNEE PONGNORSING
An Individual

7
8 APPROVED AS TO FORM AND CONTENT:

9
10 Dated: October __, 2013

By: _____
PETER S. GREGOROVIC, ESQ.
Attorney for Defendants

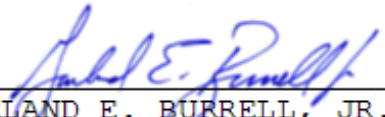
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

The Court, having reviewed the court files and parties' settlement agreement (the Agreement) and finding good cause therefor, hereby APPROVES the terms of the Agreement. The stipulated entry of judgment as provided in the Agreement shall be entered as a separate judgment.

IT IS SO ORDERED.

Dated: October 29, 2013



GARLAND E. BURRELL, JR.
Senior United States District Judge