SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND RITE AID OF MICHIGAN, INC., UNDER THE AMERICANS WITH DISABILITIES ACT

DJ# 202-38-56

Press Release

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Rite Aid of Michigan, Inc. ("Rite Aid of Michigan").
2. This matter is based upon a complaint filed with the United States Department of Justice that alleged that an on-duty pharmacist with Rite Aid of Michigan, Store #1609 discriminated against an individual with a disability in violation of title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181, *et seq*. Specifically, the Complainant alleged that an on-duty pharmacist at Rite Aid Pharmacy Store #1609 refused to administer a flu shot to him because he has HIV.
3. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND FINDINGS

4. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulation implementing title III, 28 C.F.R. pt. 36.
5. The United States has determined that Complainant, an individual who has HIV, has a physical impairment that substantially limits one or more major life activities, including

the functions of his immune system, which is a major bodily function. Accordingly, the United States has determined that he has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.

6. Rite Aid Pharmacy Store #1609 is a pharmacy owned by Rite Aid of Michigan, Inc., that, among other things, administers flu shots. It is located at 1664 West Grand River Avenue, Okemos, Michigan, 48864.
7. Rite Aid of Michigan owns, leases (or leases to), or operates a place of public accommodation within the meaning of 42 U.S.C. § 12182(a). Rite Aid Pharmacy Store #1609 is a private entity within the meaning of 42 U.S.C. § 12181(6), and is considered a place of public accommodation because it affects commerce and is a service establishment within the meaning of 42 U.S.C. § 12181(7) and 28 C.F.R. § 36.104.
8. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a).
9. As a result of its investigation, the United States has determined that:
    a. The Complainant entered Rite Aid Store #1609 on September 12, 2012, to receive a flu shot.
    b. The on-duty pharmacist refused to administer the shot to the Complainant. Even though the pharmacist had surgical gloves available to her, the pharmacist stated that she needed "special gloves" to administer the flu shot to the Complainant because of his HIV and she stated that she did not have those gloves at the store.

The pharmacist asked the Complainant to return on another day after the store had ordered the "special gloves." Rite Aid Pharmacy #1609 continued to administer flu shots to others on September 12, 2012.

c. An employee from the Rite Aid Pharmacy #1609 called the Complainant the following day to schedule a flu shot for him at a time when the pharmacist who insisted on needing "special gloves" was not working. Unlike other customers, the Complainant was asked to schedule an appointment at a specific time for his flu shot.

d. The Complainant complained about this treatment to Rite Aid and decided to go to a different Rite Aid location to receive his flu shot, where he received his flu shot.

10. The United States has determined that Rite Aid of Michigan discriminated against the Complainant by denying him the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Rite Aid Pharmacy #1609, on the basis of disability, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. Specifically, the United States has determined that the on-duty pharmacist's refusal to administer the flu shot to the Complainant and requiring him to schedule an appointment for a flu shot when such requirement is not imposed on others violated title III of the ADA.

ACTIONS TO BE TAKEN BY RITE AID OF MICHIGAN

11. Rite Aid of Michigan shall not discriminate against any individual on the basis of disability, including HIV, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Rite Aid Pharmacy Store #1609, in violation of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. pt. 36.

12. Within 90 days of the effective date of this Agreement, Rite Aid of Michigan shall draft and implement a policy stating that it does not discriminate in the provision of services to persons with disabilities, including persons who have HIV. Once it has been approved by counsel for the United States, this policy shall be conspicuously posted in

the waiting area of Store #1609 and shall be made available to any customer at Store #1609 upon request.

13. Within 90 days of the effective date of this Agreement, and on the second anniversary of the effective date of this Agreement, Rite Aid of Michigan shall provide training on title III of the ADA to all employees with pharmacy-related responsibilities and any managers or supervisors at Store #1609, including training about HIV discrimination and the requirements of this Agreement. In addition, Rite Aid Pharmacy Store #1609 shall ensure that all new employees with pharmacy-related responsibilities and all new managers or supervisors receive the training as a component of new employee training and orientation within 30 days of being hired.
14. All training manuals or written materials concerning Rite Aid Pharmacy Store #1609's policies and practices used in the training required in paragraph 13, or revised or created during the term of this Agreement, shall be consistent with the provisions of this Agreement, and approved in advance by counsel for the United States.
15. Rite Aid of Michigan will notify counsel for the United States when it has completed the actions described in paragraphs 12 and 14. Store #1609 shall create and maintain an attendance log that documents the name of each individual who attends the trainings required in paragraph 13, his or her title, and the date he or she attended the training. Copies of such attendance sheets shall be provided to the United States within 10 days of any request for them.
16. Within 30 days of the effective date of this Agreement, Rite Aid of Michigan shall pay $10,000 to the Complainant.
17. Within 30 days of the effective date of this Agreement, Rite Aid of Michigan shall pay a civil penalty in the amount of $5,000 as authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest.
18. Rite Aid of Michigan shall not discriminate or retaliate against any person because of his or her participation in this matter.

19. During the duration of this Agreement, within 30 days of receipt of any complaint related to discrimination on the basis of HIV at any store owned or operated by Rite Aid of Michigan, Rite Aid of Michigan shall send an electronic message to counsel for the United States with a copy of any such complaint or, if an oral complaint was made, a description of the complaint, and Rite Aid of Michigan's response.

OTHER PROVISIONS

20. In consideration for the Agreement set forth above, the United States will not institute any civil action based on the determinations made in paragraph 9, except as provided in paragraph 21 below.
21. The United States may review Rite Aid of Michigan's compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with Rite Aid of Michigan and the parties will attempt to resolve the concerns in good faith. The United States will give Rite Aid of Michigan 30 days from the date it notifies it of any breach of this Agreement to cure that breach. If the United States is unable to reach a satisfactory resolution of the issue(s) raised within 30 days of the date that it provides notice to Rite Aid of Michigan, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA after the notice and cure periods have expired.
22. Failure by the United States to enforce any of the provisions of this Agreement shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.
23. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Rite Aid of Michigan shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this

Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

24. This Agreement shall be binding on Rite Aid of Michigan, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. In the event that Rite Aid of Michigan seeks to sell, transfer, or assign all or part of its interest in Store #1609 during the term of this Agreement, as a condition of sale, transfer, or assignment, Rite Aid of Michigan shall obtain the written accession of the successor or assignee to any obligation remaining under this Agreement for the remaining term of this Agreement.
25. A signatory to this document in a representative capacity for Rite Aid of Michigan represents that he or she is authorized to bind Rite Aid of Michigan to this Agreement. Neither this Agreement nor compliance with its terms shall be construed as an admission by Rite Aid of Michigan of a violation of any statutory or common law provision or requirement.
26. This Agreement constitutes the entire agreement between the United States and Rite Aid of Michigan on the matters raised herein, and no other prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, shall be enforceable. This Agreement can only be modified or amended by mutual written agreement of the parties.
27. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of HIV. Nothing in this Agreement changes Rite Aid of Michigan's obligation to otherwise comply with the requirements of the ADA.
28. A copy of this Agreement or any information contained in it may be made available to any person by the United States.

EFFECTIVE DATE/TERMINATION DATE

29. The effective date of this Agreement is the date of the last signature below.

30. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

/s/
Rite Aid of Michigan, Inc.
30 Hunter Lane
Camp Hill, PA 17011

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2/04/2014
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