

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,
Plaintiff

v.

[26] LLC WHOLESALE SUPPLY, LLC

Defendant.

12-CR-00922-DRD-3

**DEFERRED PROSECUTION
AGREEMENT**

The United States of America, by and through Rosa Emilia Rodríguez, the United States Attorney for the District of Puerto, and Senior Litigation Counsel Charles Walsh; and defendant LLC Wholesale Supply, LLC (“LLC”), by and through its court-appointed Receiver, MCA Financial Group, Ltd. (the “Receiver”)¹, and the Receiver’s attorney, James L. Burke, Esq., hereby enter into this Deferred Prosecution Agreement (the “Agreement”):

1. This document contains the complete Agreement between the United States Attorney’s Office for the District of Puerto Rico (“United States”) and LLC regarding this case. This Agreement is limited to the United States Attorney’s Office for the District of Puerto Rico and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

2. Defendant LLC, by and through the Receiver, expressly agrees that it shall not, either directly or through his attorneys, agents, or employees, or through, make any public statement contradicting any statement of fact contained in the Indictment. Any such contradictory statement by LLC or its attorneys, agents, employees, shall constitute a breach of this Agreement, and LLC would thereafter be subject to prosecution pursuant to the terms of this Agreement. The decision of whether

¹ A civil suit is pending in the Superior Court of the State of Arizona, Maricopa County, Cause No. CV2012-8651 by and between Drogueria De La Villa, Inc., Distributors, Inc., LLC and James and Jane Doe Livanavage (the “Arizona Action”). In the suit, the Honorable Dean Fink appointed the Receiver on August 12, 2012 to take possession and manage the business affairs of LLC. Accordingly, the Receiver was not in possession and control of LLC during the period when the alleged unlawful acts occurred and the Receiver has not undertaken any independent investigation with respect to those alleged actions. By Minute Entry dated November 21, 2012, Judge Fink has required that the Receiver seek Court approval for any agreement relating to any criminal action pending against LLC.

any statement by any such person contradicting a fact contained in the Indictment will be imputed to LLC, for the purpose of determining whether LLC has breached this Agreement, shall be in the sole and reasonable discretion of the United States. This paragraph is intended to apply to, but is not limited to, any statement made by LLC or in the course of any criminal, regulatory, or civil case initiated by a governmental or private party against LLC. Notwithstanding the foregoing, this Agreement shall not apply to Co-Defendant Drogueria de la Villa, Inc. ("DDLV"), or any of its agents, representatives, affiliates, owners, or employees. No term of this Agreement, or the fact of entry of this Agreement by the Receiver, shall be used in any criminal proceeding against DDLV or any its affiliates, agents, owners, or representatives of DDLV.

3. Defendant LLC expressly agrees:

(a) It shall not knowingly violate any federal, state, and local laws, including without limitation the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301 *et seq.*, and the Public Health Service Act, 42 U.S.C. §201 *et seq.*, and their implementing regulations, and with any industry guidelines regarding the wholesale distribution of prescription drugs;

(b) It shall not engage in any wholesale distribution of prescription drugs except under the conditions set forth in this Agreement. The term "wholesale distribution" has the same meaning as that the term defined at 21 U.S.C. §353(e)(3)(B), except that for purposes of this agreement, "wholesale distribution" includes intra-company sales and transfers, intrastate transfers, and transactions involving articles described in 21 U.S.C. §353(c)(3)(B).

(c) Defendant LLC will permit representatives of the Federal Food and Drug Administration ("FDA"), without prior notice and as and when the FDA deems necessary, to make inspections of defendant's business operations, including any new locations. Such inspections may include the examination and copying of any contracts or other records relating to LLC business operations. Such inspections shall be permitted upon presentation of a copy of this Agreement and appropriate credentials. The

inspection authority granted by this Agreement is apart from, and in addition to, any FDA authority to make inspections under 21 U.S.C. §374.

4. In consideration of defendant LLC's willingness to: (i) cooperate with the United States; (ii) demonstrate future good conduct and full compliance with all federal, state, and local laws, including without limitation the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301 *et seq.* and its implementing regulations; (iii) implement remedial measures, including without limitation the remedial measures listed above; and (iv) settle any and all civil and criminal forfeiture claims currently held by the United States, its agencies, and representatives against the funds referred to in civil settlement agreement (Attachment A) for the sum of \$1,385,588.41, seized in Civil Case No. 11-1394 (PG), the United States shall recommend to the Court, pursuant to 18 U.S.C. §3161(h)(2), that prosecution of defendant LLC be deferred for a period of twenty-four (24) months. Defendant LLC shall consent to a motion, the contents to be agreed by the parties, to be filed by the United States with the Court promptly upon execution of this Agreement, pursuant to 18 U.S.C. §3161(h)(2), in which the United States will present this Agreement to the Court and move for (i) a continuance of all further criminal proceedings, including trial, for a period of twenty-four (24) months, (ii) speedy trial exclusion of all time covered by such a continuance, and (iii) approval by the Court of this deferred prosecution. Defendant LLC further agrees to waive, and does hereby expressly waive, any and all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, U.S.C. §3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the District of Puerto Rico, for the period of time that this Agreement is in effect.

5. Defendant LLC also agrees that, in the event of a breach of this Agreement, the government will be free to use against defendant LLC, directly and indirectly, in any criminal or civil proceeding, any of the statements, information, and/or materials provided by defendant or its representatives pursuant to this Agreement and not as to co-defendant DDLV, or its agents, representatives, affiliates, owners, or employees.

6. The United States agrees that, if defendant LLC is in full compliance with all of his obligations under this Agreement upon the expiration of the twenty-four (24)-month period set forth in

paragraph 5 above, within thirty (30) days of the expiration of such time period the United States shall seek dismissal with prejudice, as to defendant LLC of the Indictment filed in this case.

7. Defendant LLC understands that this Agreement to defer prosecution is subject to approval of both this Court in accordance with 18 U.S.C. §3161(h)(2) and by Judge Dean Fink of the Superior Court of the State of Arizona, Maricopa County. Should either Court decline to approve a deferred prosecution for any reason, the United States and defendant LLC are released from any obligation imposed upon them by this Agreement and this Agreement shall be null and void.

8. Except in the event of a breach, the parties agree that all criminal investigations arising from: (a) the facts contained in, connected to, or involving the transactions described in the indictment; (b) other transactions that were the subject of grand jury subpoenas in the course of this investigation, as well as LLC's efforts to comply with grand jury subpoenas issued in the course of the investigation; and (c) LLC's compliance program and related obligations related to this agreement shall not be pursued further and the United States will not bring any additional charges relating to these matters as to LLC, or any of its parents, affiliates, successors, or related companies (but not including any authorized delegates, employees, principals, owners, or affiliated individuals, who remain subject to prosecution for the transactions).

9. LLC agrees that, if LLC's business operations are sold, whether by sale of stock, merger, consolidation, sale of a significant portion of its assets, or other form of business combination, or otherwise undergoes a direct or indirect change of control within the term of this Agreement, LLC shall include in any contract for sale or merger a provision binding the purchaser/successor to the obligations of this Agreement. Notwithstanding the foregoing, this paragraph shall not apply to any transfer of LLC assets approved by order of the Maricopa County Superior Court to settle or otherwise resolve the Arizona Action.

10. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between the United States and defendant LLC. Other than this Agreement and the civil settlement agreement attached hereto, no agreement, understanding, promise, or condition exists between the United States and defendant LLC. Nor will any such agreement, understanding, promise, or condition exist unless it is

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committed to writing and signed by the defendant, counsel for such defendant, and counsel for the United States. This Agreement supersedes any prior promises, agreements, or conditions between the United States and defendant LLC.

11. This Agreement is freely and voluntarily made and is not the result of force or threats, or of any promises apart from those specifically set forth in this Agreement. The Receiver has not conducted an independent investigation of the allegations made against LLC contained in the Indictment and cannot address the veracity of the allegations. The Receiver agrees to enter this Agreement, and abide by all terms contained herein, for the purpose of settling this criminal matter, the forfeiture complaint pending in this District in Case No. 11-1394(PG), and the civil case pending in the Superior Court of the State of Arizona, Maricopa County, Case No. CV2012-08651.

12. Defendant LLC agrees that this Agreement, and an Order deferring prosecution, shall be publicly filed with the United States District Court for the District of Puerto Rico, and shall become a part of the record of the case.

APPROVALS AND SIGNATURES

A. LLC Wholesale Supply, LLC: I, MCA Financial Group, Ltd, the court-appointed receiver of LLC, hereby expressly acknowledge the following: (1) that I have read this entire agreement; (2) that I have had an opportunity to discuss this Agreement fully and completely with LLC's outside attorneys; (3) that LLC fully and completely understands each and every one of its terms; (4) that LLC is fully satisfied with the advice and representation provided to them by their attorneys; and (5) that LLC has signed this Agreement voluntarily.

MCA FINANCIAL GROUP, LTD.

Dated: 2-27-13

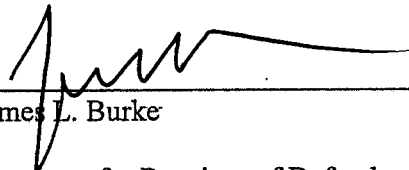
Stacie H. Witten

Morris Aaron
Stacie Witten
Court-appointed Receiver for Defendant
LLC Wholesale Supply, LLC

13. Defense Counsel: The undersigned is counsel for the receiver of LLC Wholesale Supply, LLC. In connection with such representation, I acknowledge that: (1) I have discussed this Agreement with my client; (2) I have fully explained each one of the Agreement's terms to my client; (3) I have fully answered each and every question put to me by my client regarding the Agreement; and (4) I believe my client completely understands all of the Agreement's terms.

QUARLES & BRADY LLP

Dated: 2-28-13

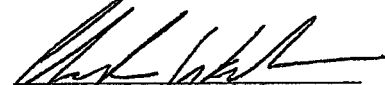

James L. Burke


Attorneys for Receiver of Defendant
LLC Wholesale Supply, LLC

C. Attorney for United States: I accept and agree to this Agreement on behalf of the government.

Dated: 2/27/13

ROSA EMILIA RODRÍGUEZ
United States Attorney
District of Puerto Rico

By: 
CHARLES WALSH
Senior Litigation Counsel

Er: 
ERNESTO LOPEZ-SOLTERO
Unit Chief, White Collar Crime


JOSE RUIZ
Chief, Criminal Divisions