

FILED

JUN 26 2007

**CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
AJIT TRIKHA,)
)
Defendant.)

CRIMINAL NO. 06-30098-DRH

PLEA AGREEMENT

The attorney for the Government and the attorney for the Defendant have engaged in discussions and have reached an agreement pursuant to Federal Rule of Criminal Procedure 11. As a result of that agreement, the Defendant intends to plead guilty in this case. The full and complete Plea Agreement is as follows:

I.

1. Defendant will cooperate fully with the United States. Defendant agrees and acknowledges that his obligation to cooperate requires him to provide complete and truthful testimony under penalty of perjury before any Grand Jury or in any trial proceeding. Furthermore, the Defendant understands that this agreement requires him to testify concerning all criminal activity about which he knows, whether or not Defendant was himself involved.

2. Defendant also agrees and acknowledges that his obligation to cooperate requires him, upon request, to provide complete and truthful information to any Federal or State law enforcement agencies concerning any criminal activity about which he knows. Defendant agrees that any such information he provides law enforcement agencies will be complete and truthful.

3. Besides the foregoing, the Defendant will do all things deemed necessary by the United States Attorney and/or any law enforcement agents to assist law enforcement personnel in their investigations into activities in which the Defendant is involved or about which he knows.

4. Defendant further agrees that his obligation to cooperate includes providing information concerning his knowledge of criminal activity in the Southern District of Illinois, and elsewhere, including, but not limited to, all federal districts.

5. The Defendant and the Government both agree that, pursuant to the United States Sentencing Commission *Guidelines Manual*, § 1B1.8 [hereinafter "U.S.S.G."], information that the Defendant provides pursuant to his obligation to cooperate fully under the terms of this agreement shall not be used in determining Defendant's applicable guideline range.

6. The United States will inform the Court of the extent of his voluntary cooperation; however, Defendant understands that the Court did not participate in this agreement, is not bound by any recommendations of the Government, and further, that he will not be allowed to withdraw his plea of guilty, once entered.

7. Defendant will not be prosecuted in the Southern District of Illinois for any other crimes now known to the Government or to become known to the Government by virtue of Defendant's cooperation.

8. In conjunction with the provisions of paragraphs 1, 2, 3, and 4, hereinabove, Defendant specifically agrees and acknowledges that if he does not cooperate fully or does not testify truthfully before the Grand Jury or at any trial in any federal district where he is called by the United States as a witness, then the United States is completely released from any obligation arising from this agreement and the Defendant is subject to full prosecution and punishment for any crime known

to the Government at this time. It is further understood that no action taken by the Government, pursuant to this paragraph, shall be grounds for the Defendant to withdraw his plea.

9. Defendant acknowledges that he has been advised and does fully understand the following:

(a) the nature of the charges to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law;

(b) that he has the right to plead not guilty or to persist in that plea if it has already been made, and he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself;

(c) that if he pleads guilty, there will not be a further trial of any kind, so that by pleading guilty, he waives the right to a trial;

(d) that if he pleads guilty, the Court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement;

(e) that if he pleads guilty, he will waive his right to persist in his plea of not guilty, to be tried by a jury, to have assistance of counsel at the trial, and to confront and cross-examine witnesses against him at trial;

(f) that if he pleads guilty, he is pleading guilty to a felony punishable by a term of imprisonment exceeding one year. Therefore, no matter what sentence the Court imposes (whether probation or any term of imprisonment), he will be forbidden by federal firearms laws from possessing any type of firearm in his lifetime, unless he obtains relief pursuant to 18 U.S.C. § 925, or other appropriate federal statute.

10. Defendant agrees that this Plea Agreement and Stipulation of Facts constitutes the entire agreement between him and the United States and that no promises, inducements or

representations, other than those specifically set forth in this Plea Agreement and Stipulation of Facts, were made to induce him to enter into this Plea Agreement and Stipulation of Facts.

11. It is further understood that this agreement is limited to the Southern District of Illinois, and cannot bind other federal, state or local prosecuting authorities. It is further understood that this Plea Agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil proceedings directly or indirectly involving Defendant.

12. Defendant understands that this offense is subject to Title 28, United States Code, Section 994(a). Defendant has been advised and understands that the Sentencing Guidelines are advisory and that the Court will consider the applicable Guidelines in conjunction with 18 U.S.C. § 3553(a), in determining the appropriate sentence.

13. Defendant understands that pursuant to Title 18, United States Code, Section 3013, the Court will assess a "Special Assessment" of \$100 per felony count. Defendant agrees that he will pay the full amount of the special assessment prior to or at the time of sentencing.

14. Defendant understands that the Court will impose a term of "supervised release" to follow incarceration. *See* 18 U.S.C. § 3583; U.S.S.G. § 5D1.1.

15. Defendant understands that the Court may impose a fine, costs of incarceration, and costs of supervision and that the Government will recommend the imposition of a fine. The estimated costs of such incarceration or community confinement or supervision, pursuant to an advisory notice from the Administrative Office of the United States Courts dated May 24, 2006, are, for imprisonment: \$1,952.66 per month; for community confinement: \$1,736.98 per month; and for supervision: \$287.50 per month. The Defendant agrees to make complete financial disclosure by truthfully filling out, at the request of the United States Attorney, a Financial Statement (OMB-500).

16. The Defendant states that he has read this agreement and has discussed it with his attorney, and understands it.

17. The Defendant understands and agrees that if he commits any offense in violation of federal, state, or local law, or violates any condition of release, or violates any term or condition of this agreement, the Government is not bound by the provisions herein and may request that the Court impose on the Defendant any penalty allowable by law, including the filing of additional charges or sentencing enhancement notices, in addition to any sanctions that may be imposed for violation of the Court's order setting the conditions of release. No action taken or recommendation made by the Government pursuant to this paragraph shall be grounds for the Defendant to withdraw his plea.

II.

1. The Defendant states that he is actually guilty and will enter a plea of guilty to counts 1 and 2 of the Superseding Indictment, charging healthcare program fraud against the Medicare program and Illinois Medicaid program, in violation of Title 18, United States Code, Section 1347. The maximum penalty that can be imposed for each violation of healthcare program fraud is ten years' imprisonment or a \$250,000 fine, or both, and not more than 3 years' supervised release.

2. The Government and the Defendant agree that the following constitutes the essential elements of the offense:

FIRST: that the defendant knowingly devised or participated in the scheme to defraud a healthcare benefit program in connection with the delivery of or payment for healthcare benefits, items, or services, as described in Counts 1 and 2 of the Superseding Indictment.

SECOND: that the defendant did so knowingly, willfully, and with the intent to defraud.

The Defendant agrees and admits that his conduct violated these essential elements of the offense.

3. The Government and Defendant submit to the Court that it appears that under the Sentencing Guidelines, after all factors have been considered, Defendant will have an Offense Level of 19 and a Criminal History Category of I, where the sentencing range is 30 to 37 months. The Defendant and the Government further submit that it appears that under the Sentencing Guidelines, after all factors have been considered, the Defendant's fine range will be \$6,000 to \$60,000 according to U.S.S.G. § 5E1.2. The Government and Defendant also submit to the Court that this submission is not intended to be binding on the Court and that the Court ultimately will determine the guideline range after receiving the Presentence Report and giving both parties the opportunity to comment thereon. The Defendant expressly recognizes that, regardless of the guideline range found or the sentence imposed by the Court, he will not be permitted to withdraw his plea. The Government and the Defendant agree that the offense level and the criminal history category calculations submitted by the parties herein constitute the parties' good faith efforts to inform the Court of their beliefs as to the applicable sentencing range and acknowledge that it is the Court which is ultimately responsible for determining the applicable Guideline range and determining the sentence which will be imposed. The Government agrees to recommend a sentence and fine that is at the low end of the range ultimately found by the Court. The Government specifically reserves the right to argue for, present testimony, or otherwise support the Probation Office's or the Court's findings as to Offense Level and Criminal History Category (which may be in excess of the calculations set forth herein by

the Defendant and the Government). The Defendant understands that the Sentencing Guidelines are advisory only and that the Court has the discretion to sentence the Defendant anywhere up to the statutory maximum sentence after consideration of the Sentencing Guidelines, and the factors set forth in 18 U.S.C. § 3553(a), including the nature and circumstances of the offenses and the criminal history and characteristics of the Defendant.

4. Defendant and the Government agree that the initial Guideline Offense Level in this case is 6 pursuant to U.S.S.G. § 2B1.1. The Government further maintains that the specific offense characteristic of gain or loss of not less than \$1 million but not more than \$2.5 million applies, thus the Defendant's initial Guideline Offense level should be increased 16 levels, creating a base offense level of 22. The Defendant may present evidence suggesting that the loss is less than \$1 million.

5. Defendant and the Government agree that no victim-related adjustments apply to this offense. *See* U.S.S.G. § 3.A.

6. Defendant and the Government agree that his role in the offense was such that his offense level should be neither increased (under 3B1.1) nor decreased (under 3B1.2).

7. Defendant and the Government agree that Defendant has not obstructed justice in this case and therefore, pursuant to U.S.S.G. § 3C1.1, the Defendant's base offense level should not be increased.

8. Defendant and the Government agree that Defendant has voluntarily demonstrated a recognition and affirmative acceptance of personal responsibility for this criminal conduct, and the Government will recommend a reduction of 3 Levels, reducing the Offense Level to 19 (from Offense Level 22). *See* U.S.S.G. § 3E1.1.

9. Defendant and the Government submit to the Court that it appears that the Defendant has amassed zero (0) Criminal History points and that, therefore, his Sentencing Guideline Criminal History Category is I. The Defendant and the Government arrived at this Category based upon the following information:

<u>Date</u>	<u>Charge</u>	<u>Disposition</u>	<u>Guideline</u>	<u>Score</u>
none known				

Defendant expressly recognizes that the final calculation will be determined by the Court after considering the Presentence Report, the views of the parties and any evidence submitted prior to sentencing. Defendant recognizes that, regardless of the criminal history found by the Court, he will not be able to withdraw his plea.

10. The Defendant understands that the Government will recommend the imposition of a fine. The Defendant understands that the Government's recommendation may be based in part on the Defendant's projected earnings through the Inmate Financial Responsibility Program.

11. Defendant and the Government agree that based upon substantial assistance rendered through the complete and total cooperation of Defendant, the Government may, in the sole discretion of the United States Attorney, file either a motion under § 5K1.1 of the Sentencing Guidelines or a motion under Rule 35 of the Federal Rules of Criminal Procedure advising the Court of a recommended reduction in sentence. The Motion, if any, will only be filed if the assistance rendered by the Defendant is found to be complete and thoroughly truthful, regardless of the outcome of any trial or hearing at which the Defendant may testify. The Defendant understands that any reduction of sentence, and the extent of that reduction, lies in the discretion of the Court.

12. Defendant will cooperate fully with the United States Probation Office in its collection of information and preparation of the Presentence Report in this matter. Said cooperation will include signing all releases, as requested.

III.

1. The Defendant understands that by pleading guilty, he is waiving all appellate issues that might have been available if he had exercised his right to trial. The Defendant states that he is fully satisfied with the representation he has received from his counsel, that they have discussed the Government's case, possible defenses and have explored all areas which the Defendant has requested relative to the Government's case and his defense.

2. The Defendant is aware that Title 18, Title 28 and other provisions of the United States Code afford every defendant limited rights to contest a conviction and/or sentence. Acknowledging all this, and in exchange for the recommendations and concessions made by the United States in this plea agreement, the Defendant knowingly and voluntarily waives his right to contest any aspect of his conviction and sentence that could be contested under Title 18 or Title 28, or under any other provision of federal law, except that if the sentence imposed is in excess of the Sentencing Guidelines as determined by the Court (or any applicable statutory minimum, whichever is greater), the Defendant reserves the right to appeal the reasonableness of the sentence. The Defendant acknowledges that in the event such an appeal is taken, the Government reserves the right to fully and completely defend the sentence imposed, including any and all factual and legal findings supporting the sentence, even if the sentence imposed is more severe than that recommended by the Government. Defendant knowingly and voluntarily waives his right to seek a pardon, whether before or after his release from custody.

3. Defendant's waiver of his right to appeal or bring collateral challenges shall not apply to: 1) any subsequent change in the interpretation of the law by the United States Supreme Court or the United States Court of Appeals for the Seventh Circuit, which is declared retroactive by those Courts, and which renders the defendant actually innocent of the charges covered herein, and 2) appeals based upon Sentencing Guideline amendments which are made retroactive by the United States Sentencing Commission (see U.S.S.G. § 1B1.10). The Government reserves the right to oppose such claims for relief.

4. Defendant's waiver of his appeal and collateral review rights shall not affect the Government's right to appeal Defendant's sentence pursuant to Title 18, United States Code, Section 3742(b). This is because United States Attorneys lack any right to control appeals by the United States, through plea agreements or otherwise; that right belongs to the Solicitor General. 28 C.F.R. § 0.20(b).

5. Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any Department or Agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation, any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

6. Defendant waives all claims under the Hyde Amendment, Title 18, United States Code, Section 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

7. A. The Defendant acknowledges that the Government has provided complete discovery compliance in this case. Defendant states that he has reviewed said discovery compliance

with his attorney. Defendant states that he has been advised that there may be items of physical evidence in this case which may have biological evidence, such as semen, blood, saliva, hair, skin tissue, or other identifiable biological material, that could be subjected to DNA testing either now or in the future. Defendant understands that the Government does not intend to conduct DNA testing of any of the items of physical evidence Defendant states that he has discussed with his attorney his rights regarding DNA testing on the physical items seized as evidence in this case and is satisfied that there is no need for any DNA testing of any evidence in this case.

B. The Defendant states that he specifically understands that he could request DNA testing of evidence in this case before he pleads guilty pursuant to this Plea Agreement. He further understands that, if the Court enters a judgment of conviction for the offenses to which he pleads guilty pursuant to this Plea Agreement, he could request DNA testing of evidence in this case after conviction under the conditions specified in 18 U.S.C. § 3600.

C. The Defendant states that knowing and understanding his right to request DNA testing, he knowingly and voluntarily waives and gives up that right. He understands that this waiver applies to DNA testing of all items seized as evidence in this case that could be subjected to DNA testing. He further understands that he is waiving the right to request DNA testing of evidence in this case in the current proceeding, in any proceeding following conviction under 18 U.S.C. § 3600, and in any other type of proceeding in which DNA testing may be requested. He fully understands that, as a result of his waiver of the right of DNA testing, that he will never have another opportunity to have the evidence in this case submitted for DNA testing or to employ the results of DNA testing to support a claim that he is actually innocent of the offenses to which he pleads guilty pursuant to this Plea Agreement.

D. The Defendant states that he has fully discussed the significance of DNA testing both before and after his conviction and its possible uses with his attorney. The Defendant states he is satisfied with his attorney's explanation concerning DNA testing and the advice his attorney has provided to him concerning the consequences of waiving the right to request DNA testing.

E. The Defendant states that he has been advised of his rights under 18 U.S.C. §§ 3600 and 3600A. Defendant states that he waives those rights and consents to the destruction of all items of physical evidence seized in this case.

IV. (Forfeiture)

1. Agreement to forfeit assets.

The Defendant agrees to forfeit to the United States immediately and voluntarily any and all property, real or personal, that constitute or are derived, either directly or indirectly, from gross proceeds traceable to the commission of the offenses described in Counts 1 and 2 of the Superseding Indictment. For Count 1, the property to be forfeited consists of **\$1,852,243.36 in United States funds**. For Count 2, the property to be forfeited consists of **\$1,852,243.36 in United States funds**. As the proceeds received as a violation of Count 1 are the same proceeds as received for Count 2, the total amount to be forfeited to the United States is **\$1,852,243.36 in United States funds**.

2. Forfeiture of other assets and entry of forfeiture monetary judgment.

The Defendant agrees that the United States is not limited to forfeiture of the property described above. If the United States determines that property of the Defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been

substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the Defendant up to the value of any property described above. This Court shall retain jurisdiction to settle any disputes arising from application of this clause.

The Defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the Defendant's sentence. Forfeiture of the Defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the Defendant in addition to forfeiture.

The Defendant agrees that a monetary forfeiture judgment in the amount of \$1,852,243.36 shall be entered against him in favor of the United States and that this sum represents the proceeds received by the defendant as a result of the conduct described in the Superseding Indictment. Said judgment may be enforced by the forfeiture of substitute property, may be enforced as an ordinary monetary judgment, or may be enforced by a combination of both methods, as long as double recovery is not obtained. The Defendant further stipulates that the property represented by said monetary judgment, as a result of acts and omissions of the defendant, either cannot be located upon the exercise of due diligence, has been transferred to or deposited with a third party, has been placed beyond the jurisdiction of the Court, has been substantially diminished in value, or has been commingled with other property which cannot be divided without difficulty. The Defendant further stipulates that the Court may enter a finding pursuant to 21 USC 853(p), without further hearing, and that all elements necessary for the forfeiture of substitute property have been established.

The Defendant agrees specifically that the following may be forfeited as substitute property:

A. Real property located at 6915 West Main Street, Belleville, Illinois, and all attachments, appurtenances and improvements thereon, more specifically described as follows:

All of Lots 6, 7 and the Southeasterly 15 feet of Lot 8 in Block 1 of "OGLEDALE"; reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois in Book of Plats W on Page 10.
Parcel No. 07-01-0-418-039

B. Real property located at 931 Lafite Court, St. Louis, Missouri, and all attachments, appurtenances and improvements thereon, more specifically described as follows:

Lot 28 of STATHMORE PLAT TWO, according to the plat thereof recorded in Plat Book 192 pages 74 and 75 in the St. Louis County Recorder's Office.

With respect to the real estate located at 6915 West Main Street, Belleville, Illinois, Defendant warrants that he is the sole actual owner of said premises, that he is the sole beneficiary of the "Ajit Trikha Revocable Living Trust", and that no other entity or person has any interest or lien on the subject matter premises, except for any lien in favor of St. Clair County, Illinois, which may arise out of outstanding real estate taxes.

With respect to the real estate located at 931 Lafite Court, St. Louis, Missouri, Defendant does not warrant that no other entity or person has any interest or lien on the subject matter premises and affirmatively states that said property is encumbered by mortgages.

The United States may at its discretion abandon the forfeiture of any of the forfeited property items at any time by filing notice of said abandonment with the Court.

The United States may, but is not obligated to, accept money in lieu of forfeiture of any particular asset pursuant to 19 U.S.C. § 1613(c), and the provisions of said 19 U.S.C. § 1613(c) are hereby incorporated.

3. Assist in recovery of assets.

The Defendant further agrees to fully assist the Government in the recovery and return to the United States of any of the foregoing assets.

The Defendant further agrees to make a full and complete disclosure of all assets over which Defendant exercises control and those which are held or controlled by a nominee.

The Defendant agrees to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, the signing of any other documents necessary to effectuate such transfers, and the execution of withdrawals of any claims or defenses which may have previously been asserted against the forfeiture of any of the property. The steps further include the obtaining of any and all necessary documentation required to release the title, purported ownership interest, or possession of any of the property which is being held by a straw party. The Defendant further authorizes his attorney, John D. Stobbs, II, to execute on the Defendant's behalf any documents requested by the Government to effectuate the forfeiture. However, notwithstanding the foregoing, the Defendant is not pledging that he will remove all existing third-party encumbrances or pay off all third-party liens on the real estate at 931 Lafite Court, St. Louis, Missouri.

The Defendant agrees to consent to any civil or administrative forfeiture brought against the property described above. The Defendant waives service of process or notice in any such civil proceeding and agrees that an order for forfeiture may be entered in said civil proceeding without further notice or hearing. The Defendant further waives any right to claim any interest in any property previously seized from him or any other person or in an property previously forfeited from

him or any other person and any right to seek damages from the United States or any of its officers, agents, or employees stemming from any said seizure or forfeiture.

All steps necessary to locate property and to pass title to the United States shall be completed no later than 14 days before the Defendant's sentencing. Time is of the essence.

The United States Marshal may, at his discretion, immediately or at any other time, obtain possession of any and all of the forfeited property, real or personal. In the alternative, the United States Marshal may, at his discretion, wait until all third-party claims have been resolved before taking custody of any or all of the assets.

The Defendant agrees that forfeiture of the Defendant's assets shall not be treated as satisfaction of any fine, restitution, costs of imprisonment, or any other penalty this Court may impose upon the Defendant in addition to forfeiture. The Defendant further agrees that the United States may, at its sole discretion, apply all or part of said assets towards any restitution judgment entered in this cause and that if it does so, it is not obligated to complete the forfeiture process against said assets.

4. Waiver of rights.

The Defendant further specifically waives the following constitutional or legal rights which he may otherwise possibly have had:

- (a) Any right to assert that the forfeiture violates the 8th Amendment of the Constitution or otherwise constitute an excessive fine or forfeiture or cruel and unusual punishment.
- (b) Any right to assert that the imposition of the forfeiture constitutes jeopardy with respect to the constitutional prohibition against double jeopardy; and the Defendant specifically agrees that the imposition of any fine, restitution, imprisonment, costs of imprisonment, or penalty (either judicial or administrative) shall not be barred by the imposition of the forfeiture, nor shall the imposition of the

forfeiture be barred by any such fine, restitution, imprisonment, costs of imprisonment, or penalty (either judicial or administrative).

(c) Any requirement that the forfeitures must be commenced or completed at or by any particular time, including but not limited to any time or date imposed by a statute of limitations, any other statute, the doctrine of laches, or any administration rule or regulation. The Defendant further specifically agrees that the Court may immediately enter a preliminary order of forfeiture in this criminal proceeding consistent with this plea agreement and that it is not necessary to wait for the formal sentencing of the Defendant for the entry of said order.

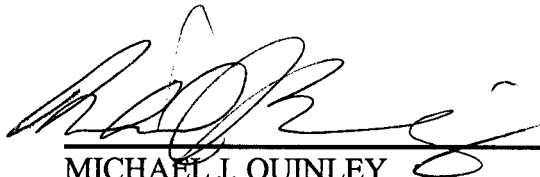
V.

No matters are in dispute.

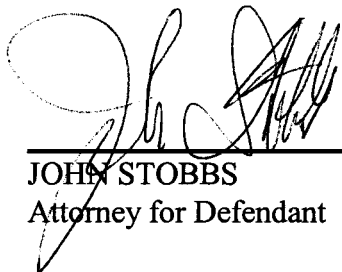
RANDY G. MASSEY
Acting United States Attorney



AJIT TRIKHA
Defendant



MICHAEL J. QUINLEY
Assistant United States Attorney



JOHN STOBBS
Attorney for Defendant

Date: 6-20-07

Date: 6-26-2007