

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 12-CR-00189-DGK
)
MICHAEL EARL RYSER,)
)
 Defendant.)

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement in which the parties jointly ask the Court to impose a specific sentence as an appropriate disposition of this case, to-wit: (1) a sentence of imprisonment within the range of 24-30 months; (2) after imprisonment, three years of supervised release; (3) restitution to the health care benefit programs specified herein in the approximate amount of \$51,789.53; (4) no fine; (5) forfeiture of the property identified in the Allegation of Forfeiture in the Indictment filed in this case and (6) a \$200 special assessment.

1. The Parties. The parties to this agreement are the United States Attorney’s Office for the Western District of Missouri (otherwise referred to as “the Government” or “the United States”), represented by Tammy Dickinson, United States Attorney, and Lucinda S. Woolery and Thomas M. Larson, Assistant United States Attorneys, and the defendant, MICHAEL EARL RYSER (“the defendant”), represented by James R. Hobbs and David Bell.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri, and that it does not bind any other

federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to Count One of the Indictment charging him with a violation of 18 U.S.C. § 1347, that is, health care fraud. The defendant also agrees to and hereby does plead guilty to Count Two of the Indictment charging him with a violation of 26 U.S.C. § 7206(1), that is, filing a false tax return. The defendant agrees to forfeit to the United States the property described in the Allegation of Forfeiture in the Indictment. By entering into this plea agreement, the defendant admits that he knowingly committed these offenses, and is in fact guilty of these offenses.

Counts Three and Four will be dismissed at the time of sentencing.

3. Factual Basis for Guilty Plea. The parties agree that the facts constituting the offense to which defendant is pleading guilty are as follows:

A. Background

Health Centers of America-Kansas City, LLC (HCA) is a medical clinic in Kansas City, Missouri that purports to specialize in the diagnosis and treatment of chronic diseases such as Lyme disease, chronic fatigue syndrome, fibromyalgia, and other auto immune diseases. Defendant CAROL ANN RYSER (CAROL RYSER) is a medical doctor and the medical director and an owner of HCA. Defendant MICHAEL EARL RYSER (MICHAEL RYSER) is married to CAROL RYSER. He is the Chief Executive Officer, Chief Administrator, Vice-President, and Chairman of the Board of HCA.

B. Health Care Fraud

Under federal law, a health care benefit program is a public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract. Medicare, Medicaid, and Tricare are health care benefit programs under federal law. In addition, private insurance companies, third party administrators, and self-funded healthcare plans administered by an employer may also be health care benefit programs under federal law.

HCA was out of network and non-participating with all or nearly all health care benefit programs. Typically, patients who sought treatment at HCA paid in advance, and then HCA submitted claims for reimbursement to the health care benefit program on behalf of the patient.

HCA used the American Medical Association's Current Procedural Terminology, known as CPT codes, to submit claims for reimbursement to health care benefit programs.

Health care benefit programs require providers such as HCA to keep written medical records that accurately reflect patient histories, pertinent findings, examination and test results, and recommendations for services to be rendered. These written records must document the support for the submitted claims, and health care benefit programs are allowed to review the patient's file to determine whether the claim is, in fact, supported.

Defendants engaged in fraudulent billing by "upcoding" and falsifying claims submitted to health care benefit programs in an effort to be paid more than the amount to which HCA was entitled. Variations on defendants' health care fraud scheme included:¹

i. Billing for physician office visits when CAROL RYSER was out of town

When CAROL RYSER was traveling or out of town, in certain instances, she saw patients before she left town and billed for services after she returned to the office. At other times, however, when CAROL RYSER was traveling or out of town, HCA employee D.S. (who was not a physician) saw patients who sought treatment at HCA. CAROL RYSER did not see the patient. Defendants would then submit, or cause to be submitted, claims to health care benefit programs falsely indicating that CAROL RYSER had seen the patients face-to-face. In some cases, when CAROL RYSER returned from out of town, she would sign the superbills and medical charts as if she had actually seen the patient at the clinic. The CPT code on the claim often falsely reflected that CAROL RYSER had spent forty or more minutes face-to-face with the patient.

ii. Billing for physician office visits when CAROL RYSER had little or no involvement with the patient

Even when CAROL RYSER was in town and at HCA, D.S. often provided all or substantially all of the services rendered to the patient, and CAROL RYSER would either not see

¹ The Indictment included an additional variation of health care fraud based on the government's contention that it is a well-established principle in the health care industry that if a service is not documented, it is deemed to not have occurred and is therefore not reimbursable. The government contends that defendants submitted claims for services purportedly provided by CAROL RYSER when, in fact, there are no medical records, such as patient progress notes, to show that the patient actually received treatment at HCA. This is not part of the factual basis for this plea agreement, but the government contends it should be considered as relevant conduct for purposes of paragraph 4 of this plea agreement.

the patient at all or see them only for a minimal amount of time compared to the total time charged for the office visit requiring physician face-to-face time. Defendants would then submit, or cause to be submitted, claims to health care benefit programs falsely indicating that CAROL RYSER had seen the patient face-to-face for the time that D.S. saw the patient.

iii. Billing for physician office visits when the patient contact was by telephone call

CAROL RYSER and D.S. had telephone calls with patients. Defendants would then submit, or cause to be submitted, claims to health care benefit programs falsely indicating that CAROL RYSER had seen the patient face-to-face at the clinic. The CPT code on the claim often reflected that CAROL RYSER had spent forty or more minutes face-to-face with the patient.

iv. Billing for physician-supervised IV services when no physician was on duty at the clinic

Defendants scheduled and arranged for HCA patients to receive intravenous services at HCA at a time when no physician was on duty at HCA. When the patients came to the clinic and received intravenous services, no physician was on duty there, although in some instances CAROL RYSER may have been available by telephone. Defendants would then submit, or cause to be submitted, claims to health care benefit programs falsely showing that the intravenous services had been supervised by a physician at HCA.

v. Improperly billing for consultation services

The CPT codes for consultation services typically reimburse at a higher rate than the codes for other evaluation and management office visit codes. CPT code 99245 reimburses at the highest level for the consultation codes, and physicians typically spend 80 minutes face-to-face time with the patient and/or family. The requirements for HCA to properly bill CAROL RYSER's services for a consultation included: (a) another physician or other appropriate source had to request CAROL RYSER's opinion or advice regarding evaluation and/or management of a specific problem; and (b) CAROL RYSER's opinion and any services that were ordered or performed had to be documented in the patient's medical record and communicated by written report to the requesting physician or other appropriate source.

Defendants submitted claims for consultation services purportedly provided by CAROL RYSER when, in fact, no physician or other appropriate source had requested her opinion or advice regarding evaluation and/or management of a specific problem, and CAROL RYSER's opinion and services that were ordered or performed were not communicated by written report to the requesting physician or other appropriate source.

vi. Loss Amount

The Indictment describes six variations of billing fraud and includes tables of claims demonstrating each type of billing fraud. For those claims specifically included in the Indictment, the total amount billed on those claims was \$359,168.25. The total amount that was actually paid on those claims by health care benefit programs was \$51,789.53.

Based on his experience with health care benefit programs, the defendant knew and expected that HCA would be paid less than the full amount sought in the claims submitted, in large part because the clinic was out of network and non-participating for most insurance companies. The reasonably foreseeable pecuniary harm and intended loss that resulted from defendants' health care fraud cannot be determined with certainty. However, based on defendant's experience with health care benefit programs and their reimbursement rates, he estimates that the reasonably foreseeable pecuniary harm and intended loss for the claims in the charts in the Indictment to be more than \$70,000 but not more than \$120,000.

C. Tax Charges - Fraud and False Statements

i. Background

CAROL RYSER and MICHAEL RYSER willfully filed false Form 1040 U.S. Individual Income Tax Returns for the years 2006-08. They understated their gross receipts for those years and substantially overstated their expenses for 2006. The returns at issue were self-prepared, and signed by both defendants under penalty of perjury. The returns at issue were individual returns purporting to reflect the income and receipts for their clinic, which they operated as a sole proprietorship (Schedule C). The defendants are educated (CAROL RYSER is a medical doctor; MICHAEL RYSER has a Master of Divinity degree).

The defendants operated their business as a sole proprietorship and gross receipts were deposited into accounts that MICHAEL RYSER maintained and controlled. Virtually all amounts identified as taxable business receipts were deposited into Valley View account 7857 and Bank of America account 0634. However, the defendants reported only the gross receipts deposited into the Valley View account and part of the gross receipts deposited into the Bank of America account. The defendants were the sole signers on these bank accounts where business receipts were deposited.

Defendants' expenditures, and their joint knowledge of the proceeds of HCA, show that defendants were fully aware that the gross receipts that should have appeared on their tax returns were substantially more than the amounts reported on their 2006, 2007, and 2008 returns.

ii. Specific information regarding 2006-08 tax returns

A bank deposits method of proof was used to calculate defendants' gross receipts. Computations were based on the cash method of accounting because that was used by the

defendants on Schedule C to their returns. The combined understatement of \$2,501,802 is nearly 25% of the \$10,060,012 in combined corrected gross receipts for these three years. Also, expenses on Schedule C for 2006 were substantially overstated. The total overstated expenses for that year was \$9,462,145. The details are:

Tax Year	Reported Gross Receipts	Corrected Gross Receipts	Understated Gross Receipts	Overstated Expenses	Tax Loss
2006	\$1,972,820	\$2,658,392	\$685,572	\$9,462,145	\$250,719
2007	2,268,187	3,367,576	1,099,389	- 434,063	249,898
2008	3,317,203	4,034,043	716,841	- 397,567	115,132
Totals	\$7,558,210	\$10,060,012	\$2,501,802	\$8,630,515	\$615,749

4. Use of Factual Admissions and Relevant Conduct. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining defendant's guilt and advisory sentencing range under the United States Sentencing Guidelines ("U.S.S.G."), including the calculation of the defendant's offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that in calculating the offense level for the charge to which defendant is pleading guilty, the conduct charged in any dismissed counts of the Indictment as well as all other uncharged related criminal activity may be considered as "relevant conduct" pursuant to U.S.S.G. § 1B1.3(a)(2), or as part of the "offense of conviction" pursuant to U.S.S.G. § 1B1.2.

5. Statutory Penalties. The defendant understands that upon defendant's plea of guilty to Count One of the Indictment charging him with health care fraud, the maximum penalty the Court may impose is not more than ten years of imprisonment, a \$250,000 fine, three years of supervised release, an order of restitution, and a \$100 mandatory special assessment per felony count of conviction which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class C felony.

The defendant further understands that upon his plea of guilty to Count Two of the Indictment charging him with filing a false tax return, the maximum penalty the Court may impose is not more than three years of imprisonment, a \$100,000 fine, one year of supervised release, an order of restitution, and a \$100 mandatory special assessment per felony count of conviction which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class E felony.

6. Sentencing Procedures and Defendant's Agreements. The defendant acknowledges, understands and agrees to the following:

a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission. While these Guidelines are advisory in nature, and the Court ordinarily would have the discretion to impose a sentence either less than or greater than the court-determined advisory Guidelines range, in this instance the parties agree, pursuant to Rule 11(c)(1)(C), that the Court must impose sentence as follows:

- a sentence of imprisonment within the range of 24-30 months;
- after imprisonment, three years of supervised release;
- restitution to the health care benefit programs specified herein in the approximate of \$51,789.53, the exact amount to be determined prior to sentencing;
- no fine;
- forfeiture of the property identified in the Allegation of Forfeiture in the Indictment filed in this case; and
- a \$200 special assessment.

If the Court accepts this plea agreement, it must inform the defendant that sentence will be imposed in accordance with this agreement of the parties. If the Court rejects this plea agreement, it must, on the record and in open court, inform the parties that the Court rejects the plea agreement, advise the defendant personally that because the Court is rejecting the plea agreement the Court is not

required to impose sentence in accordance with the agreement of the parties, give the defendant an opportunity to withdraw defendant's guilty plea, and further advise the defendant that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the defendant than the plea agreement contemplated;

b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;

c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to three years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;

d. if the defendant commits a supervised release violation, the Court may revoke supervised release and impose an additional period of imprisonment of up to two years without credit for time previously spent on supervised release. In addition to a new term of imprisonment, the Court also may impose a new period of supervised release, the length of which cannot exceed three years, less the term of imprisonment imposed upon revocation of the defendant's first supervised release;

e. any sentence of imprisonment imposed by the Court will not allow for parole;

f. The defendant agrees that the United States may institute civil, judicial or administrative forfeiture proceedings against all forfeitable assets in which the defendant has an interest, and that defendant will not contest any such forfeiture proceedings;

g. The defendant agrees to forfeit all interests defendant owns or over which defendant exercises control, directly or indirectly, in any asset that is subject to forfeiture to the United States either directly or as a substitute for property that was subject to forfeiture but is no longer available for the reasons set forth in 21 U.S.C. § 853(p) including but not limited to the following specific property: United States Currency in the amount of \$51,789.53. With respect to any asset which the defendant has agreed to forfeit, the defendant waives any constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment to the United States Constitution;

h. The defendant agrees to fully and truthfully disclose the existence, nature and location of all assets forfeitable to the United States, either directly or as a substitute asset, in which defendant, any co-defendants and any co-conspirators have or had any direct or indirect financial interest, or exercise or exercised control, directly or indirectly, during the period from January 1, 2003 to the present. The

defendant also agrees to fully and completely assist the United States in the recovery and forfeiture of all such forfeitable assets;

i. The defendant agrees to take all necessary steps to comply with the forfeiture matters set forth herein before defendant's sentencing;

j. Within 10 days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit (1) a Tax Information Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that the United States will use the financial information when making its recommendation to the Court regarding the defendant's acceptance of responsibility; and

k. At the request of the USAO, the defendant agrees to undergo any polygraph examination the United States might choose to administer concerning the identification and recovery of forfeitable assets and restitution.

7. Government's Agreements. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal offenses related to health care fraud and filing false tax returns for which it has venue and which arose out of the defendant's conduct described above. Additionally, the United States Attorney for the Western District of Missouri agrees to dismiss Counts Three and Four at sentencing.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney's Office for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises

made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives defendant's right to challenge the initiation of the dismissed or additional charges if defendant breaches this agreement. The defendant expressly waives the right to assert a statute of limitations defense if the dismissed or additional charges are initiated following defendant's breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against defendant following a breach of this plea agreement, defendant will not be allowed to withdraw defendant's guilty plea.

8. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of defendant's criminal activities. The defendant understands these disclosures are not limited to the count to which defendant has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. Withdrawal of Plea. Either party reserves the right to withdraw from this plea agreement for any or no reason at any time prior to the entry of the defendant's plea of guilty and

its formal acceptance by the Court. In the event of such withdrawal, the parties will be restored to their pre-plea agreement positions to the fullest extent possible. However, after the plea has been formally accepted by the Court, the defendant may withdraw defendant's plea of guilty only if the Court rejects the plea agreement or if the defendant can show a fair and just reason for requesting the withdrawal.

10. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are advisory in nature. If the Court accepts this Rule 11(c)(1)(C) plea agreement, the Court is bound to impose the sentence agreed to by the parties, as set forth in paragraph 6 above;

b. Health care fraud: The applicable Guidelines section for the health care fraud charge is U.S.S.G. § 2B1.1, which provides for a base offense level of 6. As explained above, the defendant estimates that the reasonably foreseeable pecuniary harm and intended loss for the claims in the tables in the Indictment to be more than \$70,000 but not more than \$120,000. Under § 2B1.1(b)(1)(E), if the loss is more than \$70,000, then there is an 8 level increase to the base offense level of 6, yielding an offense level of 14;

c. Tax: As set forth above, the tax loss is \$615,749. The applicable Guidelines section for the tax charges are U.S.S.G. § 2T1.1 and § 2T4.1(H), which provides for a base offense level of 20;

d. These charges require consideration of “grouping” issues under U.S.S.G. § 3D1.1 through § 3D1.4. Pursuant to 8th Circuit precedent, *United States v. Shevi*, 345 F.3d 675 (8th Cir. 2003), the health care fraud and tax charges will not be grouped under § 3D1.2. Under § 3D1.4, the combined offense level is determined by taking the offense level applicable to the group with the highest offense level (here, tax at level 20) and increasing it as set forth in the table in that section. The health care fraud offense (level 14) is 6 levels less serious than the tax offense. Therefore, the tax offense level is increased by 1 level to yield a combined offense level of 21;

e. The defendant has admitted his guilt and clearly accepted responsibility for defendant's actions, and has assisted authorities in the investigation or prosecution of defendant's own misconduct by timely notifying authorities of

defendant's intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. Therefore, defendant is entitled to a three-level reduction pursuant to § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect, unless the defendant (1) fails to abide by all of the terms and conditions of this plea agreement and defendant's pretrial release; or (2) attempts to withdraw defendant's guilty plea, violates the law, or otherwise engages in conduct inconsistent with defendant's acceptance of responsibility;

f. There is no agreement between the parties regarding the defendant's criminal history category. The parties agree that the Court will determine defendant's applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

g. The defendant understands that the estimated Guideline calculations set forth in the subsections of this paragraph do not bind the Court or the United States Probation Office with respect to the Court's determination of the applicable advisory Guidelines;

h. The defendant and the United States confirm that the agreed sentence set forth in paragraph 6 above is both reasonable and authorized by law;

i. The defendant consents to judicial fact-finding by a preponderance of the evidence for all issues pertaining to the determination of the defendant's sentence, including the determination of any mandatory minimum sentence (including the facts that support any specific offense characteristic or other enhancement or adjustment), and any legally authorized increase above the normal statutory maximum. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the Indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence, may consider any reliable information, including hearsay; and

j. The defendant understands and agrees that the factual admissions contained in Paragraph 3 of this plea agreement, and any admissions that defendant will make during the plea colloquy, support the imposition of the agreed-upon sentence and Guidelines calculations contained in this agreement.

11. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its

subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. Change in Guidelines Prior to Sentencing. The defendant agrees: (a) to be bound by the agreed sentence set forth in this plea agreement even if an applicable provision of the Guidelines changes to the defendant's benefit after the execution of this plea agreement; and, (b) any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charge in the Indictment;
- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed and that the United States remains free on appeal or collateral proceedings to defend the legality and propriety of the sentence actually imposed, even if the Court does not impose the sentence agreed to by parties in this agreement; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

14. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that defendant has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;

b. the right to be presumed innocent until defendant's guilt has been established beyond a reasonable doubt at trial;

c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;

d. the right to confront and cross-examine the witnesses who testify against defendant;

e. the right to compel or subpoena witnesses to appear on defendant's behalf; and

f. the right to remain silent at trial, in which case defendant's silence may not be used against defendant.

The defendant understands that by pleading guilty, defendant waives or gives up those rights and that there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, defendant's answers may later be used against defendant in a prosecution for perjury or making a false statement. The defendant also understands defendant has pleaded guilty to a felony offense and, as a result, will lose the right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

15. Waiver of Appellate and Post-Conviction Rights.

a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement defendant waives any right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement, except on grounds of (1) ineffective assistance of counsel; or (2) prosecutorial misconduct.

b. The defendant expressly waives any right to appeal defendant's sentence, directly or collaterally, on any ground except claims of (1) ineffective

assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An “illegal sentence” includes a sentence imposed in excess of the statutory maximum, but does *not* include less serious sentencing errors, such as a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government’s appeal, cross-appeal defendant’s sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

16. Financial Obligations. By entering into this plea agreement, the defendant understands and agrees to the following financial obligations:

a. The Court may order restitution to the victims of the offense to which the defendant is pleading guilty. The defendant agrees that the Court may order restitution in connection with the conduct charged in any counts of the Indictment which are to be dismissed and all other uncharged related criminal activity.

b. The United States may use the Federal Debt Collection Procedures Act and any other remedies provided by law to enforce any restitution order that may be entered as part of the sentence in this case and to collect any fine.

c. The defendant will fully and truthfully disclose all assets and property in which defendant has any interest, or over which the defendant exercises control directly or indirectly, including assets and property held by a spouse, nominee or other third party. The defendant’s disclosure obligations are ongoing, and are in force from the execution of this agreement until the defendant has satisfied the restitution order in full.

d. Within 10 days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit (1) a Tax Information Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that compliance with these requests will be taken into account when the United States makes a recommendation to the Court regarding the defendant’s acceptance of responsibility.

e. At the request of the USAO, the defendant agrees to undergo any polygraph examination the United States might choose to administer concerning the identification and recovery of substitute assets and restitution.

f. The defendant hereby authorizes the USAO to obtain a credit report pertaining to defendant, which will be used by the USAO to evaluate the defendant's ability to satisfy any financial obligations imposed as part of the sentence.

g. The defendant understands that a Special Assessment will be imposed as part of the sentence in this case. The defendant promises to pay the Special Assessment of \$200 by submitting a satisfactory form of payment to the Clerk of the Court prior to appearing for the sentencing proceeding in this case. The defendant agrees to provide the Clerk's receipt as evidence of defendant's fulfillment of this obligation at the time of sentencing.

h. The defendant certifies that defendant has made no transfer of assets or property for the purpose of (1) evading financial obligations created by this Agreement; (2) evading obligations that may be imposed by the Court; nor (3) hindering efforts of the USAO to enforce such financial obligations. Moreover, the defendant promises that defendant will make no such transfers in the future.

i. In the event the United States learns of any misrepresentation in the financial disclosure statement, or of any asset in which the defendant had an interest at the time of this plea agreement that is not disclosed in the financial disclosure statement, and in the event such misrepresentation or nondisclosure changes the estimated net worth of the defendant by ten thousand dollars (\$10,000.00) or more, the United States may at its option: (1) choose to be relieved of its obligations under this plea agreement; or (2) let the plea agreement stand, collect the full forfeiture, restitution, and fines imposed by any criminal or civil judgment, and also collect 100% (one hundred percent) of the value of any previously undisclosed assets. The defendant agrees not to contest any collection of such assets. In the event the United States opts to be relieved of its obligations under this plea agreement, the defendant's previously entered pleas of guilty shall remain in effect and cannot be withdrawn.

17. Waiver of FOIA Request. The defendant waives all rights, whether asserted directly or by a representative, to request or receive, or to authorize any third party 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, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

18. Waiver of Claim for Attorney's Fees. The defendant waives all claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

19. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw defendant's plea of guilty.

The defendant also understands and agrees that in the event defendant violates this plea agreement, all statements made by defendant to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by defendant before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against defendant in any and all criminal proceedings. The defendant waives any rights that defendant might assert under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that pertains to the admissibility of any statements made by defendant subsequent to this plea agreement.

20. Defendant's Representations. The defendant acknowledges entering into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that defendant is satisfied with the assistance of

counsel, and that counsel has fully advised defendant of defendant's rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, defendant's attorneys or any other party to induce defendant to plead guilty.

21. Tax Consequences. If the Court orders the defendant to pay restitution to the IRS for the failure to pay tax, either directly as part of the sentence or as a condition of supervised release, the IRS will use the restitution order as the basis for a civil assessment. *See* 26 U.S.C. § 6201(a)(4). The defendant does not have the right to challenge the amount of this civil assessment. *See* 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor the defendant's timely payment of restitution according to that schedule will preclude the IRS from administrative collection of the restitution-based assessment, including levy and distraint under 26 U.S.C. § 6331.

22. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions, together with any written supplemental agreement that might be presented to the Court in camera, constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement or any written supplemental agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

23. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any

drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

Tammy Dickinson
United States Attorney

Dated: 03/22/2013

/s/ Lucinda S. Woolery
Lucinda S. Woolery
Assistant United States Attorney

Dated: 03/22/2013

/s/ Thomas M. Larson
Thomas M. Larson
Assistant United States Attorney

I have consulted with my attorneys and fully understand all of my rights with respect to the offense charged in the Indictment. Further, I have consulted with my attorneys and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorneys. I understand this plea agreement and I voluntarily agree to it.

Dated: 03/22/2013

/s/ Michael Earl Ryser
Michael Earl Ryser
Defendant

We are defendant Michael Earl Ryser's attorneys. We have fully explained to defendant the rights defendant has with respect to the offense charged in the Indictment. Further, we have reviewed with defendant the provisions of the Sentencing Guidelines which might apply in this case. We have carefully reviewed every part of this plea agreement with defendant. To our knowledge, Michael Earl Ryser's decision to enter into this plea agreement is an informed and voluntary one.

Dated: 03/22/2013

/s/ James R. Hobbs
James R. Hobbs
Attorney for Defendant

Dated: 03/22/2013

/s/ David Bell
David Bell
Attorney for Defendant