



U.S. Department of Justice

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United States Attorney's Office
Western District of Wisconsin

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Address:

Suite 303, City Station
660 West Washington Avenue
Madison, Wisconsin 53703

March 29, 2013

Dean A. Strang
Hurley Burish & Stanton
33 E Main St # 400
Madison, WI 53703

Re: *United States v. David Ray Toftness*
Case No.

Dear Mr. Strang:

This is the proposed plea agreement between the defendant and the United States in this case.

1. The defendant agrees to plead guilty to Count Two of the information in this case. This count charges a violation of 21 U.S.C. § 331(a), a class A misdemeanor, which carries maximum penalties of one-year in prison, a \$100,000 fine, a one-year period of supervised release, and a \$25 special assessment. In addition to these maximum penalties, any violation of a supervised release term could lead to an additional term of imprisonment pursuant to 18 U.S.C. § 3583. The defendant agrees to pay the special assessment at or before sentencing. The defendant understands that the Court will enter an order pursuant to 18 U.S.C. § 3013 requiring the immediate payment of the special assessment. In an appropriate case, the defendant could be held in contempt of court and receive an additional sentence for failing to pay the special assessment as ordered by the Court.

2. The defendant acknowledges, by pleading guilty, that he is giving up the following rights: (a) to plead not guilty and to persist in that plea; (b) to a jury trial; (c) to be represented by counsel--and if necessary have the Court appoint counsel--at trial and at every other stage of the trial proceedings; (d) to confront and cross-examine

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adverse witnesses; (e) to be protected from compelled self-incrimination; (f) to testify and present evidence; and (g) to compel the attendance of witnesses.

3. The United States agrees that this guilty plea will completely resolve all possible federal criminal violations that have occurred in the Western District of Wisconsin provided that both of the following conditions are met: (a) the criminal conduct relates to the conduct described in the information; and (b) the criminal conduct was known to the United States as of the date of this plea agreement. This agreement not to prosecute is limited to those types of cases for which the United States Attorney's Office for the Western District of Wisconsin has exclusive decision-making authority. The defendant also understands that the United States will make its full discovery file available to the Probation Office for its use in preparing the presentence report.

4. The United States agrees to recommend that the Court, in computing the advisory Sentencing Guideline range, and in sentencing the defendant, give the defendant the maximum available reduction for acceptance of responsibility. This recommendation is based upon facts currently known to the United States and is contingent upon the defendant accepting responsibility according to the factors set forth in USSG § 3E1.1. The United States is free to withdraw this recommendation if the defendant has previously engaged in any conduct which is unknown to the United States and is inconsistent with acceptance of responsibility, or if he engages in any conduct between the date of this plea agreement and the sentencing hearing which is inconsistent with acceptance of responsibility.

5. The defendant agrees to complete the enclosed financial statement and return it to this office within one week of the guilty plea hearing. The defendant also authorizes the US Attorney's Office to run and obtain the defendant's credit report. The defendant also agrees that the probation office may disclose to the United States the net worth and cash flow statements to be completed by the defendant in connection with the preparation of the presentence report, together with all supporting documents.

6. In the event of an appeal by either party, the United States reserves the right to make arguments in support of or in opposition to the sentence imposed by the Court.

7. The defendant otherwise understands that sentencing discussions are not part of the plea agreement. The defendant should not rely upon the possibility of a particular sentence based upon any sentencing discussions between defense counsel and the United States.

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8. Defendant acknowledges that it previously agreed to tolling of any applicable statute of limitations in this matter and previously entered into tolling agreements with the government to allow time to negotiate a resolution of this matter. By this agreement, the defendant is agreeing to waive and forfeit any defense founded upon the statute of limitations for any federal offenses related to the charges in the information and during the pendency of any court supervision.

9. The defendant agrees to forfeit, surrender, abandon, and release to the FDA, and make no claim whatsoever, to the items seized during the search warrant on December 11, 2007, including but not limited to the 96 Toftness Instruments, referred to by that name or any other name, seized by the government during the search or any other items seized during the search and now in the government's possession. In addition, the defendant agrees to turn-over and surrender to the FDA, and collect from others and immediately turn over to the FDA, any device which has not been approved by the FDA in his possession or previously distributed to others, directly or indirectly, any Toftness Radiation Detector, as that device is defined in the United States District Court Injunction for the Western District of Wisconsin, in 75-C-478 and 75-C-479, dated January 18, 1982, including but not limited to any Toftness Instrument, Toftness Device, Radiation Detector, Radiometer, Sensometer, Contact Locator, Analytic Electromagnetic Radiation Receiving Device, Lens Radiation Collecting and Sensing Device, Radiation Collecting and Sensing Device, Experimental Analytic Electromagnetic Receiving Instrument, or Contact Locating Instrument.

10. The defendant further agrees to cooperate with the FDA in collecting any device set forth above, the enforcement of all of the provisions of the judgment, including the monitoring or inspection provisions of the injunction noted in United States District Court Order for the Western District of Wisconsin, in 75-C-478 and 75-C-479, dated January 18, 1982, as well as entering into any further agreements with the FDA to enforce the terms and conditions of the above stated order. The defendant agrees the FDA regulators may use information obtained as a result of this criminal investigation in a civil enforcement of the injunction.

11. The defendant further agrees that during the term of any probation or supervised release, he or anyone under his control will not possess, use, design, transfer or sell any item used in connection with Chiropractic unless the item has been previously approved by the FDA.

12. If your understanding of our agreement conforms with mine as set out above, would you and the defendant please sign this letter and return it to me. By his signature below, the defendant acknowledges his understanding that the United States has made no promises or guarantees regarding the sentence which will be imposed.

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The defendant also acknowledges his understanding that the Court is not required to accept any recommendations by the United States and that the Court can impose any sentence up to and including the maximum penalties set out above.

Very truly yours,

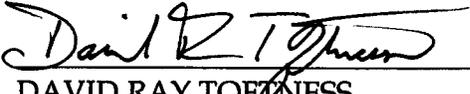
JOHN W. VAUDREUIL
United States Attorney

By: 
PETER M. JAROSZ
Assistant United States Attorney

4/1/13
Date


DEAN A. STRANG
Attorney for the Defendant

April 4, 2013
Date


DAVID RAY TOFTNESS
Defendant

4/4/13
Date

Enclosure