

1 MCGREGOR W. SCOTT
United States Attorney
2 MARK J. McKEON
Assistant United States Attorneys
3 2500 Tulare Street, Suite 4401
Fresno, CA 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
5

6 Attorneys for Plaintiff
United States of America
7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 JOHN THOMAS TERRENCE,
15 Defendant.
16

CASE NO. 1:15-cr-00179-LJO

PLEA AGREEMENT

DATE: JULY 16, 2018

TIME: 1:45 P.M.

COURT: HON. LAWRENCE J. O'NEILL

17 I. INTRODUCTION

18 A. Scope of Agreement.

19 The indictment in this case charges the defendant with violations of 18 U.S.C. § 1349 –
20 Conspiracy to Commit Health Care Fraud (1 count); 18 U.S.C. § 1347 – Health Care Fraud (15 counts);
21 and 18 U.S.C. § 9821(1)(C), § 982(a)(1), § 982(a)(7) and 28 U.S.C. § 2461(c) - Forfeiture. This
22 document contains the complete plea agreement between the United States Attorney's Office for the
23 Eastern District of California (the "government") and the defendant regarding this case. This plea
24 agreement is limited to the United States Attorney's Office for the Eastern District of California and
25 cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

26 B. Court Not a Party.

27 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
28 discretion of the Court, and the Court may take into consideration any and all facts and circumstances

1 concerning the criminal activities of defendant, including activities which may not have been charged in
2 the indictment. The Court is under no obligation to accept any recommendations made by the
3 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
4 including the statutory maximum stated in this plea agreement.

5 If the Court should impose any sentence up to the maximum established by the statute, the
6 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
7 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
8 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
9 receive.

10 II. DEFENDANT'S OBLIGATIONS

11 A. Guilty Plea.

12 The defendant will plead guilty to Count Two, Health Care Fraud, in violation of
13 18 U.S.C. § 1347. The defendant agrees that he is in fact guilty of this charge and that the facts set forth
14 in the Factual Basis for Plea attached hereto as Exhibit A are accurate.

15 The defendant agrees that this plea agreement will be filed with the Court and become a part of
16 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
17 plea should the Court not follow the government's sentencing recommendations.

18 The defendant agrees that the statements made by him in signing this Agreement, including the
19 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
20 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
21 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
22 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
23 Agreement generally.

24 B. Restitution.

25 Defendant agrees that his conduct is governed by the Mandatory Restitution Act pursuant to
26 18 U.S.C. § 3663A(c)(1)(A)(ii) and agrees to pay the full amount of restitution to all victims affected by
27 this offense, including, but not limited to, the victims covered in the factual basis, victims covered in
28 those counts to be dismissed as part of the plea agreement pursuant to 18 U.S.C. § 3663A(a)(3), and

1 other victims as a result of the defendant's conduct for the offenses charged from the periods of August
2 2005 through November 2012. The amount of restitution will be determined by the court at sentencing
3 but will not exceed \$2,538,659.

4 Defendant further agrees that he will not seek to discharge any restitution obligation or any part
5 of such obligation in any bankruptcy proceeding.

6 Payment of restitution shall be by cashier's or certified check made payable to the Clerk of the
7 Court. Any amounts owing shall be joint and several with restitution paid, or to be paid, by Pain Free
8 Management Inc., a California Corporation, dba "Pain Free Management."

9 **C. Fine.**

10 The defendant reserves the right to argue to Probation and at sentencing that he is unable to pay a
11 fine, and that no fine should be imposed. The defendant understands that it is his burden to affirmatively
12 prove that he is unable to pay a fine, and agrees to provide a financial statement under penalty of perjury
13 to the Probation Officer and the government in advance of the issuance of the draft Presentence
14 Investigation Report, along with supporting documentation. The government retains the right to oppose
15 the waiver of a fine. If the Court imposes a fine, the defendant agrees to pay such fine if and as ordered
16 by the Court, up to the statutory maximum fine for the defendant's offense.

17 **D. Special Assessment.**

18 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
19 a check or money order payable to the United States District Court to the United States Probation Office
20 immediately before the sentencing hearing. The defendant understands that this plea agreement is
21 voidable at the option of the government if he fails to pay the assessment prior to that hearing.

22 **E. Violation of Plea Agreement by Defendant/Withdrawal of Plea.**

23 If the defendant, cooperating or not, violates this plea agreement in any way, withdraws his plea,
24 or tries to withdraw his plea, this plea agreement is voidable at the option of the government. If the
25 government elects not to void the agreement based on the defendant's violation, the government will no
26 longer be bound by its representations to the defendant concerning the limits on criminal prosecution
27 and sentencing as set forth herein. A defendant violates the plea agreement by committing any crime or
28 providing or procuring any statement or testimony which is knowingly false, misleading, or materially

1 incomplete in any litigation or sentencing process in this case, or engages in any post-plea conduct
2 constituting obstruction of justice. Varying from stipulated Guidelines application or agreements
3 regarding arguments as to 18 United States Code section 3553, as set forth in this agreement, personally
4 or through counsel, also constitutes a violation of the plea agreement. The government also shall have
5 the right (1) to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate
6 any counts that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that
7 would otherwise be barred by this plea agreement. The defendant shall thereafter be subject to
8 prosecution for any federal criminal violation of which the government has knowledge. The decision to
9 pursue any or all of these options is solely in the discretion of the United States Attorney's Office.

10 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
11 defenses that the defendant might have to the government's decision. Any prosecutions that are not
12 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
13 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
14 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
15 The defendant agrees not to raise any objections based on the passage of time with respect to such
16 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
17 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
18 of the date of this plea agreement. The determination of whether the defendant has violated the plea
19 agreement will be under a probable cause standard.

20 In addition, (1) all statements made by the defendant to the government or other designated law
21 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
22 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
23 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
24 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
25 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
26 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
27 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.
28

1 **F. Forfeiture.**

2 Defendant agrees to forfeit to the United States voluntarily and immediately all right, title, and
3 interest to any and all assets seized pursuant to 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(2), 28
4 U.S.C. § 2461, and Fed. R. Crim. P. 32.2(b)(1).

5 Those assets include, but are not limited to:

- 6 1. A personal forfeiture money judgment in an amount equal to the restitution ordered by the
7 court.

8 Further, the defendant agrees that the amount equal to the amount of restitution ordered by the
9 court is a reasonable reflection of the amount that the defendant obtained directly or indirectly, as the
10 result of the underlying criminal scheme and the violation of 18 U.S.C. § 1349.

11 As part of the imposition of the personal forfeiture money judgment, the Defendant agrees to
12 provide this Office with signed waivers related to federal and state income tax returns, and a waiver of
13 the Right to Financial Privacy Act, which includes, but is not limited to, any credit records,
14 communication records, DMV records, educational records, employment records, military records,
15 business records, and credit reports maintained by any consumer credit reporting entity, until such time
16 as the money judgment is satisfied. In this regard, the Defendant agrees to complete and sign a copy of
17 IRS Form 8821 (relating to the voluntary disclosure of federal tax return information), whatever
18 financial information disclosure form which may be required by an agency, as well as this Office's Right
19 to Financial Privacy Act Waiver & Authorization to Release Information form.

20 Defendant agrees to fully assist the government in the forfeiture of any seized assets or assets
21 later determined to be forfeitable and to take whatever steps are necessary to pass clear title to the
22 United States. Defendant shall not sell, transfer, convey, or otherwise dispose of any assets found to be
23 connected to the criminal events charged in the Indictment.

24 Defendant agrees not to file a claim to any of the seized property in any criminal proceeding or
25 civil proceeding, administrative or judicial, which is or may be initiated. Defendant agrees to waive
26 right to notice of any forfeiture proceeding involving such property, and agrees to not file a claim or
27 assist others in filing a claim in such a proceeding.

28 The defendant waives the notice provisions of Fed. R. Crim. P. 7(c) and 32.2(a), waives oral

1 pronouncement of forfeiture at the time of sentencing and any defects in such pronouncement that
 2 pertain to forfeiture, and waives any defenses to forfeiture, including any defense predicated on the Ex
 3 Post Facto, Double Jeopardy, and Excessive Fines Clauses of the United States Constitution. The
 4 defendant knowingly and voluntarily waives any right to jury trial in any criminal or civil forfeiture
 5 proceeding.

6 **G. Asset Disclosure.**

7 The defendant agrees to make a full and complete disclosure of his assets and financial
 8 condition, and will complete the United States Attorney's Office's "Authorization to Release
 9 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
 10 of plea, including supporting documentation. The defendant also agrees to have the Court enter an order
 11 to that effect. The defendant understands that if he fails to complete truthfully and provide the described
 12 documentation to the United States Attorney's office within the allotted time, he will be considered in
 13 violation of the agreement, and the government shall be entitled to the remedies set forth in section II.E
 14 above.

15 **III. THE GOVERNMENT'S OBLIGATIONS**

16 **A. Dismissals/Other Charges.**

17 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
 18 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed
 19 count except if this agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation
 20 of Plea Agreement by Defendant/Withdrawal of Plea, VI.B (Estimated Guideline Calculation), and
 21 VII.B (Waiver of Appeal and Collateral Attack) herein.

22 **B. Recommendations.**

23 **1. Acceptance of Responsibility.**

24 The government will recommend a two-level reduction (if the offense level is less than
 25 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if
 26 the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G.
 27 § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation
 28 of the pre-sentence report, being truthful and candid with the probation officer, and not otherwise

1 engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either
2 in the preparation of the pre-sentence report or during the sentencing proceeding.

3 **C. Use of Information for Sentencing.**

4 The government is free to provide full and accurate information to the Court and Probation,
5 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate
6 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also
7 understands and agrees that nothing in this Plea Agreement bars the government from defending on
8 appeal or collateral review any sentence that the Court may impose.

9 Further, other than as set forth above, the government agrees that any incriminating information
10 provided by the defendant during his cooperation will not be used in determining the applicable
11 guideline range, pursuant to U.S.S.G. § 1B1.8., unless the information is used to respond to
12 representations made to the Court by the defendant, or on his behalf, that contradict information
13 provided by the defendant during his cooperation.

14 **IV. ELEMENTS OF THE OFFENSE**

15 At a trial, the government would have to prove beyond a reasonable doubt the following
16 elements of the offense to which the defendant is pleading guilty, Health Care Fraud, in violation of 18
17 U.S.C. § 1347:

18 The elements of the crime of Health Care Fraud are:

- 19 First: The defendant knowingly devised or participated in a scheme to defraud
20 California workers' compensation fund and/or private workers' compensation
21 insurers or to obtain, by means of false or fraudulent pretenses, representations, or
22 promises, any of the money or property owned by, or under the custody or control
23 of California workers' compensation fund and/or private insurers in connection
24 with the delivery of or payment for health care benefits, items, or services;
- 25 Second: The statements made or facts omitted as part of the scheme were material; that is,
26 they had a natural tendency to influence, or were capable of influencing, a person
27 to part with money or property;
28

1 Third, The defendant acted willfully and with the intent to defraud; and
2 Fourth, California workers' compensation was a public plan or contract, affecting
3 commerce, under which medical benefits, items, or services were provided to any
4 individual.

5 The defendant fully understands the nature and elements of the crime charged in the indictment
6 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
7 his attorney.

8 **V. MAXIMUM SENTENCE**

9 **A. Maximum Penalty.**

10 The maximum sentence that the Court can impose is ten years of incarceration, a fine of
11 \$250,000, a three-year period of supervised release and a special assessment of \$100. By signing this
12 plea agreement, the defendant also agrees that the Court can order the payment of restitution for the full
13 loss caused by the defendant's wrongful conduct. The defendant agrees that the restitution order is not
14 restricted to the amounts alleged in the specific count to which he is pleading guilty. The defendant
15 further agrees, as noted above, that he will not attempt to discharge in any present or future bankruptcy
16 proceeding any restitution imposed by the Court.

17 **B. Violations of Supervised Release.**

18 The defendant understands that if he violates a condition of supervised release at any time during
19 the term of supervised release, the Court may revoke the term of supervised release and require the
20 defendant to serve up to two additional years imprisonment.

21 **VI. SENTENCING DETERMINATION**

22 **A. Statutory Authority.**

23 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
24 must take them into account when determining a final sentence. The defendant understands that the
25 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
26 Sentencing Guidelines and must take them into account when determining a final sentence. The
27 defendant further understands that the Court will consider whether there is a basis for departure from the
28 guideline sentencing range (either above or below the guideline sentencing range) because there exists

1 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
 2 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
 3 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
 4 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

5 **B. Estimated Guideline Calculation.**

6 The government and the defendant agree that accept for an adjustment for Acceptance of
 7 Responsibility which is covered in paragraph III.B.2 above, each side is free to seek or argue for or
 8 against any other guideline variables, including specific offense characteristics, Chapter Three
 9 adjustments (other than the decrease for "Acceptance of Responsibility"), or cross-references.

10 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
 11 under 18 U.S.C. § 3553(a). The government is not obligated to recommend any specific sentence.

12 **VII. WAIVERS**

13 **A. Waiver of Constitutional Rights.**

14 The defendant understands that by pleading guilty he is waiving the following constitutional
 15 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
 16 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
 17 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
 18 compelled to incriminate himself.

19 **B. Waiver of Appeal and Collateral Attack.**

20 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
 21 conviction, and sentence. The defendant agrees as part of his plea, however, to give up the right to
 22 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
 23 exceed the statutory maximum for the offense to which he is pleading guilty. The defendant specifically
 24 gives up the right to appeal any order of restitution or forfeiture the Court may impose.

25 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
 26 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
 27 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
 28 understands that these circumstances occur infrequently and that in almost all cases this Agreement

1 constitutes a complete waiver of all appellate rights.

2 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
3 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
4 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

5 Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever
6 attempts to vacate his plea, dismiss the underlying charges, or modify or set aside his sentence on any of
7 the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.E
8 herein.

9 **C. Waiver of Attorneys' Fees and Costs.**

10 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
11 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
12 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
13 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
14 charges previously dismissed).

15 **D. Impact of Plea on Defendant's Immigration Status.**

16 Defendant recognizes that pleading guilty may have consequences with respect to his
17 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes
18 are removable offenses, including the offense to which the defendant is pleading guilty. The defendant
19 and his counsel have discussed the fact that the charge to which the defendant is pleading guilty is an
20 aggravated felony, or a crime that is likely to be determined to be an aggravated felony under
21 8 U.S.C. § 1101(a)(43), and that while there may be arguments that defendant can raise in immigration
22 proceedings to avoid or delay removal, it is virtually certain that defendant will be removed. Removal
23 and other immigration consequences are the subject of a separate proceeding, however, and defendant
24 understands that no one, including his attorney or the district court, can predict to a certainty the effect
25 of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty
26 regardless of any immigration consequences that his plea may entail, even if the consequence is his
27 automatic removal from the United States.
28

VIII. ENTIRE PLEA AGREEMENT

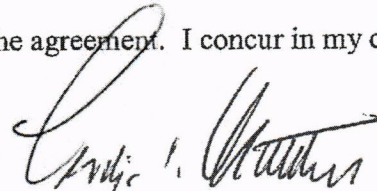
Other than this plea agreement, no agreement, understanding, promise, or condition between the government and the defendant exists, nor will such agreement, understanding, promise, or condition exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and counsel for the United States.

IX. APPROVALS AND SIGNATURES

A. Defense Counsel.

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.

Dated:



LEODIS CLYDE MATTHEWS
Attorney for Defendant

B. Defendant:

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated:



JOHN THOMAS TERRENCE
Defendant

C. Attorney for United States:

I accept and agree to this plea agreement on behalf of the government.

1 Dated: *July 13, 2018*

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
MCGREGOR W. SCOTT
United States Attorney

Mark J. McKeon
MARK J. McKEON
Assistant United States Attorney

EXHIBIT "A"

Factual Basis for Plea

Defendant TERRENCE is a clinical psychologist. He is physically located in Marina Del Rey, in Los Angeles County.

TERRENCE signed a "lease/management" agreement with Pain Free Management Company ("PFMC"), where he agreed to lease space in clinics and to use the company to keep all his medical records and submit all his billings. PFMC was also authorized to settle the liens/bills for any amount it wanted.

TERRENCE saw patients in Bakersfield by "Skype," generated reports for each patients which were virtually word-for-word identical, and then submitted bills to the insurance companies that were identical for each patient (down to the quarter of an hour billed for each service).

In addition, TERRENCE improperly submitted claims for payment for medical-legal reports written by him, ML 102 and ML 103, under circumstances when his writing medical-legal reports and his billing for them were not authorized by California law. The following of proper procedures for writing and billing for medical-legal reports in a particular case was material to the decisions of the insurers on whether to pay the claims.

TERRENCE acted at all times with the intent to defraud.

Specifically, On or about February 15, 2011, in Kern County, State and Eastern District of California, and elsewhere, defendant TERRENCE, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is worker's compensation insurance, and obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of the private insurers named below, in connection with the delivery of and payment of health care benefits, items and services, to wit, psychological evaluations, by submitting a report and bill for H.S. to Zenith in the amount of \$3,132.50.