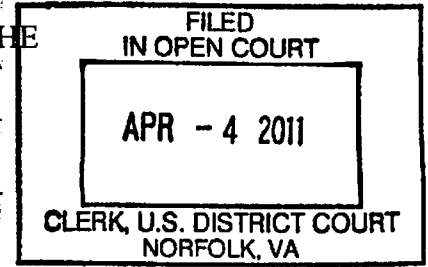


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO.
)
 EDWARD T. FODREY,)
)
 Defendant.)

PLEA AGREEMENT

The United States of America, by undersigned counsel, the defendant, Edward T. FODREY, and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to waive indictment and plead guilty to a two count criminal information. Count One charges the defendant with conspiring to commit mail fraud in violation of Title 18, United States Code, Section 1349. The maximum penalties for a violation of 18 U.S.C. § 1349 are a maximum term of twenty years of imprisonment, a fine in an amount equal to the greatest of (1) \$250,000, (2) twice the gross pecuniary gain derived by any person from the offense, or (3) twice the gross pecuniary loss caused to any person other than the defendant resulting from the offense (18 U.S.C. § 3571(b) and (d)), full restitution, a special assessment, and three years of supervised release. Count Two charges the defendant with willful failure to file a tax return in violation of Title 26, United States Code, Section 7203. The maximum penalties for a violation of 26 U.S.C. § 7203 are a maximum term of one year of imprisonment, a fine in an amount equal to the greatest of (1) \$100,000, (2) twice the gross pecuniary gain derived by any person from the offense, or (3) twice the gross pecuniary loss caused to any person other than the defendant resulting from

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the offense (18 U.S.C. § 3571(b) and (d)), the cost of prosecution, full restitution, a special assessment, and one year of supervised release. The defendant understands that the supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for a term of up to two years as to Count One and the full term of supervised release as to Count Two.

2. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offenses. The defendant admits the facts set forth in the Statement of Facts filed with this plea agreement and agrees that those facts establish guilt of the offenses charged beyond a reasonable doubt. The Statement of Facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the U.S. Sentencing Guidelines (“Sentencing Guidelines” or “U.S.S.G.”).

3. Assistance and Advice of Counsel

The defendant is satisfied that the defendant’s attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be

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②

protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

4. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the Sentencing Guidelines the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005), the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

In addition, pursuant to U.S.S.G § 6B1.4 and Federal Rule of Criminal Procedure 11(c)(1)(B), the United States and the defendant enter into the following stipulations. The United States and the defendant understand and agree that these stipulations are not binding upon either the Probation Office or the Court. The Court may make factual determinations that differ from these stipulations and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed on the defendant.

- a. As to the violation of 18 U.S.C. § 1349, the parties agree:

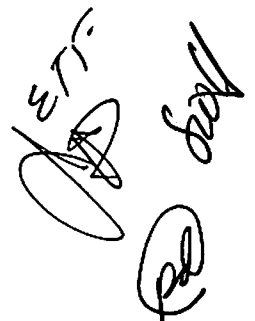
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- (1) The applicable sentencing guidelines are U.S.S.G. §§ 2X1.1, 2B1.1 and 2B4.1;
- (2) For the purpose of calculating the specific offense characteristic enhancement as established by U.S.S.G. § 2B4.1(b)(1) and § 2B1.1(b)(1), the value of the bribe or benefit conferred was \$119,500; and
- (3) There should be no increase or decrease in the offense level for defendant's role in the offense as he had neither an aggravating nor a mitigating role for purposes of U.S.S.G. § 3B1.1 and U.S.S.G. § 3B1.2, respectively.

b. As to the violation of 26 U.S.C. § 7203, the parties agree:

- (1) The applicable sentencing guideline is U.S.S.G. § 2T1.1;
- (2) For the purpose of calculating the base offense level as established by U.S.S.G. § 2T1.1(a) and § 2T4.1, gross income on which the tax loss should be calculated was \$769,432; and
- (3) There should be no increase or decrease in the offense level for defendant's role in the offense as he had neither an aggravating nor a mitigating role for purposes of U.S.S.G. § 3B1.1 and U.S.S.G. § 3B1.2, respectively.

c. For purposes of U.S.S.G. § 3E1.1, a three-level reduction of the offense level for defendant's acceptance of responsibility is appropriate. However, should the United States obtain or receive additional evidence or information prior to sentencing that, in its sole discretion, it determines to be credible and materially in conflict with this stipulation, then the United States shall no longer be bound by it.

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5. Waiver of Appeal

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

6. Special Assessment

Before sentencing in this case, the defendant agrees to pay mandatory special assessments of one hundred dollars (\$100.00) for his conviction for conspiring to commit mail fraud (Count One) and twenty five dollars (\$25.00) for his conviction for willful failure to file a tax return (Count Two).

7. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless

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of whether the Court specifically directs participation or imposes a schedule of payments.

8. Restitution for Offenses of Conviction

The defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. At this time, the Government is aware that the following victim has suffered the following loss:

<u>VICTIM</u>	<u>AMOUNT OF LOSS</u>
Medical Facilities of America, Inc.	\$243,065

9. Immunity from Further Prosecution in this District

The United States Attorney's Office for the Eastern District of Virginia and the Antitrust Division and Tax Division of the United States Department of Justice will not further criminally prosecute the defendant for the specific conduct described in the information or statement of facts. The non-prosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the securities laws, or to any crime of violence.

10. Defendant's Cooperation

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the Government. In that regard:

- a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings;
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require;
- c. The defendant agrees to provide all documents, records, writings, or materials



of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation;

- d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations, and that the United States will choose the polygraph examiner and specify the procedures for the examinations;
- e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings;
- f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the Government, and that the Government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence; and
- g. Nothing in this agreement places any obligation on the Government to seek the defendant's cooperation or assistance.

11. Use of Information Provided by the Defendant Under This Agreement

The United States will not use any truthful information provided pursuant to this agreement in any criminal prosecution against the defendant in the Eastern District of Virginia, except in any prosecution for a crime of violence or conspiracy to commit, or aiding and abetting, a crime of violence (as defined in Title 18 United States Code, Section 16). Pursuant to U.S.S.G. section

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1B1.8, no truthful information that the defendant provides under this agreement will be used in determining the applicable guideline range, except as provided in section 1B1.8(b). Nothing in this plea agreement, however, restricts the Court's or Probation Officer's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the Government in any way from prosecuting the defendant should the defendant knowingly provide false, untruthful, or perjurious information or testimony, or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested.

12. Defendant Must Provide Full, Complete and Truthful Cooperation

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

13. Motion for a Downward Departure

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

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14. Payment of Taxes and Filing of Tax Returns

The defendant consents to any motion by the United States under Rule 6(e)(3)(E) of the Federal Rules of Criminal Procedure, to disclose grand jury material to the Internal Revenue Service for use in computing and collecting the defendant's taxes, interest and penalties, and to the civil and forfeiture sections of the United States Attorney's Office for use in identifying assets and collecting fines and restitution. The defendant also agrees to file true and correct tax returns for the year 2006 within sixty days and to pay all taxes, interest and penalties for the year 2006 within a reasonable time in accordance with a plan to be devised by the Probation Office. The defendant further agrees to make all books, records and documents available to the Internal Revenue Service for use in computing defendant's taxes, interest and penalties for the year 2006.

15. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal

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violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and

- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the Statement of Facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant

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agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

16. Nature of the Agreement and Modifications

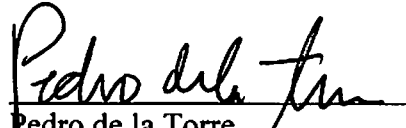
This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel and supersedes all prior understandings or agreements. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this plea agreement on behalf of the United States.

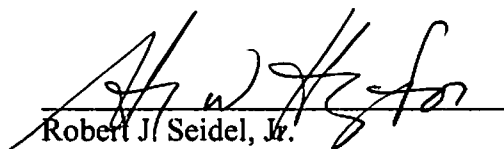
Respectfully Submitted,

Neil H. MacBride
United States Attorney

By:


Stephen W. Haynie
Assistant United States Attorney


Pedro de la Torre
Richard S. Rosenberg
Anne R. Spiegelman
Attorneys, Antitrust Division
U.S. Department of Justice


Robert J. Seidel, Jr.
Norfolk Criminal Chief



Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

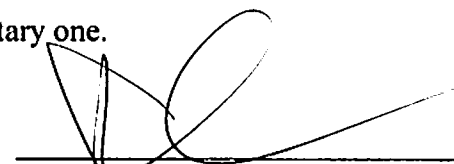
Date: 3-21-11



EDWARD T. FODREY
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending information. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 3-21-11



Jon M. Babineau
Counsel for Defendant

