

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 10-00285-01-CR-W-FJG
)
KEVIN MARTIN CUMMINGS,)
)
 Defendant.)

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

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 Beth Phillips, United States Attorney, Gregg R. Coonrod, Assistant United States Attorney, and Lucinda S. Woolery, Assistant United States Attorney, and the defendant, Kevin Martin Cummings, represented by James R. Hobbs and Marilyn B. Keller.

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 Information charging him with a violation of 21 U.S.C. § 846, that is, conspiracy to distribute OxyContin and oxycodone. The defendant also agrees to and hereby does plead guilty to Count Two of the Information charging him with a violation of 18 U.S.C. § 1956(h), that is, conspiracy to commit money laundering. The defendant also agrees to and

hereby does plea guilty to Count Three of the Information 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 Four of the Information charging him with a violation of 18 U.S.C. § 641, that is, theft of government money based on Social Security fraud. The defendant also agrees to forfeit to the United States the property described in the Allegation of Forfeiture in the Information. By entering into this plea agreement, the defendant admits that he knowingly committed these offenses, and is in fact guilty of these offenses.

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

A. Drug conspiracy

From on or about approximately July 2006 to approximately the end of January 2010, the defendant KEVIN CUMMINGS knowingly and intentionally combined, conspired, confederated and agreed with Bruce Baker, Jonna Womboldt, and others not charged herein, to possess with the intent to distribute, and distribute, OxyContin and oxycodone, a Schedule II controlled substance distributed in pill form.

CUMMINGS met Bruce Baker in approximately June 2006. Baker is an osteopathic physician. During approximately July 2006 through January 2010, while CUMMINGS may have had various medical conditions, he obtained OxyContin and oxycodone which were not intended for a medical purpose. CUMMINGS illegally obtained OxyContin and oxycodone in several fashions, but in every case with the aid of a prescription provided by Baker. CUMMINGS obtained prescriptions in his own name from Baker - without an examination - and filled the prescription at a pharmacy. Cummings also obtained prescriptions from Baker in the names of individuals who did not know their names were being used: Martin Cummings (his father), Julie Green (Womboldt's sister), and William Gagnon (his ex-wife's husband). CUMMINGS filled those prescriptions or arranged for someone else to fill them at a pharmacy. CUMMINGS also introduced co-conspirators to Baker so that the co-conspirators could obtain prescriptions for Schedule II controlled substances, including OxyContin and oxycodone, from Baker. The co-conspirators filled the prescriptions and gave some or all of the OxyContin and oxycodone to CUMMINGS who then illegally distributed it. While Baker received pills from Cummings or Womboldt as compensation for writing the prescriptions they would also often pay BAKER.

During the time frame of the charge, CUMMINGS caused OxyContin and oxycodone prescriptions to be issued in his own name and filled at pharmacies as follows: approximately 23,297 pills total comprised of 9,703 tablets of oxycodone HCL 30 mg.; 5,548 tablets of oxycodone 80 mg.; and 8,046 tablets of oxycodone-APAP 10-325 mg.

During the time frame of the charge, CUMMINGS caused OxyContin and oxycodone prescriptions to be issued in the names of Martin Cummings, Julie Green, and William Gagnon and filled at pharmacies as follows: approximately 9,619 pills total comprised of 4,699 tablets of oxycodone HCL 30 mg.; 4,200 tablets of OxyContin 80 mg., and 720 tablets of oxycodone-APAP 10-325 mg.

During the time frame of the charge, CUMMINGS caused OxyContin and oxycodone prescriptions to be issued in the names of co-conspirators Anne McNabney, Jonna Womboldt, Thomas Miller, Mark Nassar, LeAnn Srader, Matthew Brandt, Stephen Desbien, Sherri Berray, and Betty Forbih, and filled at pharmacies as follows: 9,810 pills total comprised of 8,340 tablets of oxycodone HCL 30 mg., 1,260 tablets of OxyContin 80 mg., and 210 tablets of oxycodone-APAP 10-325 mg.

This is total of 1652.66 grams X 6700 conversion to marijuana = Level 36

B. Money Laundering Conspiracy

From January 1, 2006 and continuing to on or about February 12, 2010 CUMMINGS conducted financial transaction with drug proceeds - typically cash - involving various banks. CUMMINGS established a bank account at Bank of America account ##518001597460 in the name of C & A Holding LLC. CUMMINGS conducted and directed others to conduct financial transactions that is the deposit, withdrawal, transfer of funds in the account which involved the proceeds of a specified unlawful activity, that is the unlawful distribution of OxyContin and oxycodone to purchase and maintain real estate in the name of C & A Holding LLC in whole or in part to conceal and disguise the nature, location, source ownership, and control of the proceeds of the specified unlawful activity.

CUMMINGS also established and maintained bank accounts in the names of his mudjacking businesses at US Bank, Country Club Bank and Bank of America and conducted or directed others to conduct financial transactions that is the deposit, withdraw, transfer of funds in the accounts which involved the proceeds of a specified unlawful activity, that is the unlawful distribution of OxyContin and oxycodone. CUMMINGS commingled those funds with funds derived from his mudjacking businesses, and other business ventures, to purchase real estate, make loans to individuals, cash checks; in whole or in part to conceal

the source of those funds and with the intent to promote the carrying on of said specified unlawful activity.

The amount of proceeds from unlawful distribution of OxyContin and oxycodone- again mainly cash- laundered through the various banks accounts by CUMMINGS during that period of time was \$309,043.

Also during this period of time CUMMINGS conducted financial transactions using proceeds from the distribution of Oxycontin and oxycodone to purchase, make mortgage payments or finance improvements for the following properties: 7601 Jefferson, Kansas City, Missouri; 8004 FLORA, Kansas City, Missouri; 8012 Flora, Kansas City, Missouri; 7446 Jarboe, Kansas City, Missouri; 119191 W. 66th Street, Shawnee, Kansas; 31775 W. 89th Street, De Soto, Kansas; 2729 W. 83rd Street, and Leawood, Kansas. This financial activity involving this real estate was done in whole or in part to conceal the source of those funds and with the intent to promote the carrying on of said specified unlawful activity.

C. Health Care Fraud

Prescriptions in CUMMINGS' Name. From at least January 2006 through April 2009, CUMMINGS knowingly and willfully defrauded federal health care benefit programs by causing claims for illegal prescriptions issued in his name to be submitted to and paid by federal health care benefit programs. CUMMINGS obtained prescriptions for Schedule II controlled substances from Bruce Baker (Baker), an osteopathic physician. CUMMINGS obtained these prescriptions from Baker, knowing that he had no legitimate medical need for these prescriptions and that they would be filled and the drugs used for illegal purposes. Medicare Part D is a health care benefit program under federal law. CUMMINGS was a Medicare Part D beneficiary and used his Medicare Part D benefits to, among other things, fill prescriptions. The pharmacies that filled the illegal prescriptions for CUMMINGS submitted claims for payment to Medicare Part D, and the pharmacies received payment. From September 14, 2006 through March 4, 2009, CUMMINGS caused 97 claims for illegal prescriptions in his own name to be submitted to Medicare Part D. These claims were for 16,960 Schedule II pills. Medicare Part D paid \$57,437 on those claims for illegal prescriptions. Medicaid (a/k/a Missouri HealthNet) is also a health care benefit program under federal law. CUMMINGS was a Medicaid beneficiary and used his Medicaid benefits to, among other things, fill prescriptions. The pharmacies that filled the illegal prescriptions for CUMMINGS submitted claims for payment to Medicaid, and the pharmacies received payment. From January 30, 2006 through April 1, 2009, CUMMINGS caused 62 claims for illegal prescriptions in his own name to be submitted to Medicaid. These claims were for 10,630 Schedule II pills.

Medicaid paid \$8,367 on those claims for illegal prescriptions. United Healthcare is also a health care benefit program under federal law. CUMMINGS was also a United Healthcare beneficiary and used his United Healthcare benefits to, among other things, fill prescriptions. The pharmacies that filled the illegal prescriptions for CUMMINGS submitted claims for payment to United Healthcare, and the pharmacies received payment. From February 14, 2006 through March 13, 2006, CUMMINGS caused three claims for illegal prescriptions in his own name to be submitted to United Healthcare. These claims were for 544 Schedule II pills. United Healthcare paid \$4,776 on those claims for illegal prescriptions.

Prescriptions in the Names of Martin Cummings, Julie Green, and William Gagnon. In addition, from at least August 2007 through June 2009, CUMMINGS knowingly and willfully defrauded federal health care benefit programs by causing claims for illegal prescriptions issued in the names of Martin Cummings, Julie Green, and William Gagnon to be submitted to and paid by federal health care benefit programs. CUMMINGS obtained prescriptions for Schedule II controlled substances from BAKER in the name of Martin Cummings and Julie Green, knowing that the prescriptions were not for their use, were not for a legitimate medical need, and would be filled and the drugs used for illegal purposes. Martin Cummings and Green were Medicare Part D beneficiaries. CUMMINGS caused prescriptions in the names of Martin Cummings and Julie Green to be filled at pharmacies using their Medicare Part D benefits. The pharmacies that filled the illegal prescriptions for CUMMINGS in the names of Martin Cummings and Julie Green submitted claims for payment to Medicare Part D, and the pharmacies received payment. From August 13, 2007 through February 27, 2009, CUMMINGS caused a total of 32 claims for illegal prescriptions in the names of Martin Cummings and Julie Green to be submitted to Medicare Part D. These claims were for 5,360 Schedule II pills. Medicare Part D paid \$27,372 on those claims for illegal prescriptions. Julie Green was also a Medicaid beneficiary. CUMMINGS caused prescriptions in Julie Green's name to be filled at pharmacies using her Medicaid benefits. The pharmacies that filled the illegal prescriptions for CUMMINGS in Julie Green's name submitted claims for payment to Medicaid, and the pharmacies received payment. From September 13, 2007 through December 6, 2008, CUMMINGS caused 16 claims for illegal prescriptions in Julie Green's name to be submitted to Medicaid. These claims were for 2,880 Schedule II pills. Medicaid paid \$5 on those claims for illegal prescriptions. Tricare is also a health care benefit program under federal law. William Gagnon was a Tricare beneficiary. CUMMINGS caused prescriptions in William Gagnon's name to be filled at pharmacies using his Tricare benefits. The pharmacies that filled the illegal prescriptions for CUMMINGS in Gagnon's name submitted claims for payment to Tricare, and the pharmacies received payment. From June 13, 2008 through June 25, 2009, CUMMINGS caused ten claims for illegal prescriptions in William Gagnon's name to be submitted to Tricare. These

claims were for 1,379 Schedule II pills. Tricare paid \$1,289 on those claims for illegal prescriptions.

Prescriptions in the Names of Co-Conspirators. Furthermore, from at least October 2006 through May 2009, CUMMINGS knowingly and willfully defrauded federal health care benefit programs by causing claims for illegal prescriptions issued in the names of co-conspirators to be submitted to and paid by federal health care benefit programs. CUMMINGS introduced co-conspirators to Baker so that the co-conspirators could obtain prescriptions for Schedule II controlled substances from Baker. CUMMINGS caused the co-conspirators to obtain these prescriptions, knowing that the prescriptions were not for a legitimate medical need, and would be filled and the drugs used for illegal purposes. The co-conspirators filled the prescriptions and gave some or all of the Schedule II controlled substances to CUMMINGS who then illegally distributed them. Co-conspirators Betty Forbih and Thomas Miller were Medicare Part D beneficiaries. CUMMINGS caused prescriptions in Betty Forbih's and Thomas Miller's names to be filled at pharmacies using their Medicare Part D benefits. The pharmacies that filled the illegal prescriptions submitted claims for payment to Medicare Part D, and the pharmacies received payment. From March 20, 2007 through July 20, 2007, CUMMINGS caused Betty Forbih and Thomas Miller to submit 12 claims for illegal prescriptions to Medicare Part D. These claims were for 1,800 Schedule II pills. Medicare Part D paid \$7,391 on those claims for illegal prescriptions. Co-conspirators Anne McNabney, LeAnn Srader, and Jonna Womboldt were Medicaid beneficiaries. CUMMINGS caused prescriptions in the names of Anne McNabney, LeAnn Srader, and Jonna Womboldt to be filled at pharmacies using their Medicaid benefits. The pharmacies that filled the illegal prescriptions submitted claims for payment to Medicaid, and the pharmacies received payment. From September 24, 2007 through March 13, 2009, CUMMINGS caused Anne McNabney, LeAnn Srader, and Jonna Womboldt to submit 64 claims for illegal prescriptions to Medicaid. These claims were for 5,970 Schedule II pills. Medicaid paid \$3,376 on those claims for illegal prescriptions. Blue Cross Blue Shield-Kansas City (BCBS-KC) is a health care benefit program under federal law. Co-conspirators Sherri Berray, Matthew Brandt, Stephen Desbien, and Mark Nassar were BCBS-KC beneficiaries. CUMMINGS caused prescriptions in the names of Sherri Berray, Matthew Brandt, Stephen Desbien, and Mark Nassar to be filled at pharmacies using their BCBS-KC benefits. The pharmacies that filled the illegal prescriptions submitted claims for payment to BCBS-KC, and the pharmacies received payment. From October 16, 2006 through May 31, 2009, CUMMINGS caused Sherri Berray, Matthew Brandt, Stephen Desbien, and Mark Nassar to submit 35 claims for illegal prescriptions to BCBS-KC. These claims were for 3,190 Schedule II pills. BCBS-KC paid \$7,725 on those claims for illegal prescriptions.

CUMMINGS' Medicare Part A and B Claims. Moreover, from at least 2007 through 2009, CUMMINGS knowingly and willfully defrauded federal health care benefit programs by submitting claims for Medicare Part A and B benefits in his name to which he has not entitled. Medicare Part A and B is a health care benefit program under federal law. CUMMINGS obtained Medicare Part A and B benefits because of his representations to the Social Security Administration that he was medically disabled. The Social Security Administration administers disability benefits under the Title II and Title XVI Programs. CUMMINGS falsely represented to the Social Security Administration that he had been unable to work since July 2001, as a result of his alleged disability. CUMMINGS was not entitled to receive Social Security disability benefits; therefore, he was not entitled to receive Medicare Part A and B benefits. From January 1, 2007 through December 31, 2009, CUMMINGS submitted 72 claims for Medicare Part A and B benefits to which he was not entitled. Medicare Part A and B paid \$18,642 for those benefits.

D. Theft of Government Money based on Social Security Fraud

At all times material to this Plea Agreement, the Social Security Administration (“SSA”) was an agency of the United States, which administered the Social Security Disability Program (“Title II”) pursuant to Title II of the Social Security Act, as codified at 42 U.S.C. § 406, *et seq.* and the Supplemental Security Income (“SSI”) Program pursuant to Title XVI of the Social Security Act, as codified at 42 U.S.C. §§ 1381-1383a, *et seq.*

The Social Security Act and the Title II Program established the “Disability Insurance Benefits Program,” which pays monthly cash benefits to individuals who have worked and paid Social Security taxes. SSA administers the Disability Insurance Benefits Program. To be eligible for monthly cash benefits under the program, individuals must have reached the age of sixty-two or have been found by SSA to be medically “disabled” (as that term is defined by the Social Security Act). Title II auxiliary benefits are also available for the minor children of Title II recipients, based on the eligibility of the recipient. To receive Title II disability benefits, SSA must determine that an individual's medical disability prohibits him or her from working at a substantial gainful activity level.

The Social Security Act established the SSI Program, which provides monthly cash benefits to individuals who have been found by SSA to be medically disabled, and who have been found by SSA to be eligible for SSI on the basis of financial need, as determined, based upon both income and resources (as those terms are defined for purposes of the Social Security Act).

On February 9, 2004, CUMMINGS signed an application for Social Security disability benefits under the Title II and Title XVI Programs. On his application, he falsely claimed that he had been unable to work as a result of his alleged disability since July 2001. On the same application, he also confirmed his agreement to notify SSA if his medical condition improved enabling him to work or if he actually began to work, either as an employee or a self-employed person. SSA also notified him that his medical condition and ability to work are material factors that affect his eligibility to receive Social Security disability benefits.

Based on CUMMINGS' application, in August 2004, SSA determined that he was disabled due to his alleged back pain. SSA determined that his disability onset date was February 14, 2004. At that time, he received Title XVI payments from March 2004 through August 2004. He received payments from the Title II Disability Insurance Benefits Program during the period of August 2004 through December 2009.

In actuality, CUMMINGS worked continuously since well before his disability onset date of February 14, 2004. Between February 2004 and January 2009, he owned and operated several mudjacking businesses. The businesses included the following: Affordable Mudjacking, Atlas Mudjacking, Advanced Mudjacking, and Advantage Marketing LLC. CUMMINGS was involved in the management decisions and day-to-day activities, production and services of each of these businesses. From time to time, he would turn over the management of these companies to friends, but he would still receive 50% of the profits. Even when friends took over the day-to-day operations of a company, CUMMINGS still was involved in management decisions and the operations of such companies.

In addition to creating, managing and working at the aforementioned mudjacking businesses, in late 2008 CUMMINGS started another company known as C-A Holding Property Management. He also managed this company that would buy real estate and personally refurbish it and then rent the property.

CUMMINGS worked at all of these jobs on a full-time basis and generally worked in excess of 40 hours per week. Income from these businesses fluctuated, but in non-winter months the defendant had a gross monthly income of approximately \$20,000 to \$25,000 per month from the mudjacking businesses. Additionally, he also obtained illegal income from his illicit drug distribution. SSA considers illegal income when determining whether an individual is working at a substantial gainful activity level. CUMMINGS' distribution of controlled substances coupled with the aforementioned work activity conclusively establish that he was working at a substantial gainful activity level during the entire time that he was receiving Title II and Title XVI disability payments from SSA. Accordingly, he was not eligible to receive such payments.

CUMMINGS only received Social Security disability payments due to his fraudulent activity in which he falsely informed SSA that he had been unable to work since July 2001. Moreover, he willfully failed to disclose his work activity while he was receiving benefits. In an effort to conceal his work activity from SSA, he also made numerous false official statements to the agency. On November 12, 2009, CUMMINGS met with a Claims Representative at the SSA Field Office at 66320 Euclid Avenue in Kansas City, Missouri. He arrived at the office using a cane that he doesn't need or normally use. During his interview, he made oral and written statements regarding his prior work activity. These official statements were material to SSA when determining whether he was eligible to receive Social Security benefits. CUMMINGS completed a Work Activity Report (Form SSA-821-BK) on which he falsely wrote that he did not own or operate any business. He also completed a Continuing Disability Review Report (Form SSA 454-BK) on which he falsely stated that he was not working and that he had not worked since his last medical disability decision which took place in June 2005. On or about September 13, 2005, he also completed another Continuing Disability Review Report (Form SSA 454-BK). On Section 11 of the form, he falsely answered, "No" in response to the question: "Since you became disabled, have you done any work?" CUMMINGS knowingly made all of these false official statements to SSA for the purpose of defrauding the agency of disability benefit payments.

In total, as a result of CUMMINGS' fraudulent conduct, SSA incurred a fraud loss amount totaling \$67,801.00 (Title II Payments in the amount of \$65,545.00; Title XVI Payments in the amount of \$2,256.00).

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 his 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 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) in calculating the offense level for the charges to which he is pleading guilty.

5. Statutory Penalties. The defendant understands that upon his plea of guilty to Count One of the Information charging him with conspiracy to distribute OxyContin and oxycodone, the maximum penalty the Court may impose is not more than twenty years of imprisonment, a \$1,000,000 fine, three years of supervised release, 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 understands that upon his plea of guilty to Count Two of the Information charging him with conspiracy to commit money laundering, the maximum penalty the Court may impose is not more than twenty years of imprisonment, a \$500,000 fine, three years of supervised release, 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 understands that upon his plea of guilty to Count Three of the Information 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, 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 understands that upon his plea of guilty to Count Four of the Information charging him with theft of government money based on Social Security 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, 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.

6. Sentencing Procedures. 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; these Guidelines, however, are advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";

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 at least 3 years;

d. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;

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

f. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office; and

g. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court.

h. 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 he will not contest any such forfeiture proceedings.

i. The defendant agrees to forfeit all interests he owns or over which he 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) (which is applicable to this action pursuant to 21 U.S.C. § 853(p), including but not limited to the following specific property: A sum of money equal to at least \$557,600, or more, representing the amount of proceeds obtained as a result of conspiracy charged in Count One and which facilitated the conspiracy; a sum of

money equal to at least \$624,109, or more, representing the amount of proceeds obtained as a result of conspiracy charged in Count Two and which facilitated the conspiracy; a sum of money equal to \$136,380, or more, representing the amount of proceeds obtained as a result of the health care fraud offense charged in Count Three charged in Count Three; and a sum of money equaling \$67,801, or more, representing the amount of proceeds obtained as a result of the fraudulent theft of Social Security benefits charged in Count Four; and the following items of real property, representing the amount of proceeds obtained as a result of the conspiracies charged in Counts One and Two and which facilitated those conspiracies, and representing the proceeds of the offenses charged in Counts Three and Four: 7601 Jefferson, Kansas City, Missouri; 8004 Flora, Kansas City, Missouri; 8012 Flora, Kansas City, Missouri; 119191 West 66th Street, Shawnee, Kansas; 31775 West 89th Street, DeSoto, Kansas; 7446 Jarboe, Kansas City, Missouri; and 2729 West 83rd Street, Leawood, Kansas. The total sum of money involved in the offense is \$1,385,890. However, the defendant agrees to pay to the United States within six months of the date of this agreement or on the date of sentencing but before sentencing occurs, whichever period is shorter, \$325,000, by certified check made payable to the United States Department of Justice. The defendant's failure to make this payment shall constitute a breach of the plea agreement. The United States agrees to forfeit this \$325,000 payment in lieu of the above-listed property. 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.

j. 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 he, his co-defendants and his co-conspirators have or had any direct or indirect financial interest, or exercise or exercised control, directly or indirectly, during the period from June 1, 2006 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.

k. The defendant agrees to take all necessary steps to comply with the forfeiture matters set forth herein before his sentencing.

l. The defendant states that he is the sole and rightful owner of and that to the best of his knowledge no one else has any ownership or other interest in the property. In the event any federal, state or local law enforcement agency having custody of the property decides not to pursue forfeiture of the property due to its minimal value, the defendant hereby abandons any interest he has in such property

and consents to the destruction or any other disposition of the property by the federal, state or local agency without further notice or obligation whatsoever owing to the defendant.

m. 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.

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 conspiracy to distribute OxyContin and oxycodone, conspiracy to launder money, health care fraud, and Social Security fraud, for which it has venue and which arose out of the defendant's conduct described above.

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 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 his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his 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 his criminal activities. The defendant understands these disclosures are not limited to the counts to which he 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 his pleas 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. The defendant understands that if the Court accepts his plea of guilty and this plea agreement but subsequently imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

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. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. The applicable Guidelines Manual is the one that took effect on November 1, 2009;

c. The applicable Guidelines section for the offense of conviction is U.S.S.G. §§ 2D1.1, 2S1.1 and 2B1.1, which provides for a base offense level of 36; but a two level increase for leader or organizer for a total of 38.

The wide range of charges requires an assessment of "grouping" issues under § 3D1.1 through § 3D1.4. The parties agree that the money laundering and drug charges will be grouped¹. However, the money laundering and drug charges will not be grouped with the fraud charges because, technically, there are different victims (society for the drugs and the government agencies and insurance companies on the health care and Social Security fraud).² However, analysis

¹ The total grams of OxyContin are 1652.66, which converted to marijuana for purposes of sentencing, is a Level 36. Adding in two levels for leader or organizer brings the total to 38. On the money laundering analysis, the base offense level for the drugs –36– is used and two levels are added for the money laundering, so again, a total of Level 38.

²Section 2B1.1 --which covers the fraud– starts with a base offense of 6, and is increased by 12 for the total dollar loss amount, which in this case is approximately \$204,181. Therefore

under Section 2B1.1 and Section 3D1.4(c) directs to disregard this grouping and results in the Level 38 from the drug charges is controlling. Adding the leader enhancement and subtracting acceptance of responsibility, the offense level would be 35.

Base offense level 2D1.1	36
§ 3B1.1 leader/organizer	+2
<u>Acceptance of responsibility</u>	<u>- 3</u>
Total Level	35

d. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his 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, he 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 his pretrial release; or (2) attempts to withdraw his guilty pleas, violates the law, or otherwise engages in conduct inconsistent with his acceptance of responsibility;

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

f. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in Paragraph 9 of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;

g. 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

the fraud sentence total would be a level 18. However, Section 3D1.4(c) says to "disregard any Group that is 9 or more level less serious than the Group with the highest offense level.

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

h. The defendant understands and agrees that the factual admissions contained in Paragraph 3 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed-upon 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 that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then 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 charges in the Information;

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 chooses not to follow any recommendation made by the United States; 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 he 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 his 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 him;

e. the right to compel or subpoena witnesses to appear on his behalf; and

f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to a felony offense and, as a result, will lose his 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 expressly waives his right to appeal his 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 his 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 represents that he 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 he 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 him to assist the USAO in evaluating 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 \$100 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 his fulfillment of this obligation at the time of sentencing.

h. The defendant certifies that he 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 he 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 of his rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 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 of his 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 Agreement to Destruction of Biological Evidence. In accordance with 18 U.S.C. § 3600A(c)(2), the defendant knowingly and voluntarily waives his right to request DNA testing of any biological evidence which may have been obtained or seized by law enforcement in his case. Defendant agrees that all biological evidence which may have been obtained or seized may be destroyed by law enforcement authorities.

20. 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 his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads

from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he 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 him subsequent to this plea agreement.

21. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his 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, his attorneys or any other party to induce him to enter his plea of guilty.

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.

Beth Phillips
United States Attorney

10/15/2010
Dated: _____

/s/ Gregg R. Coonrod

Gregg R. Coonrod
Assistant United States Attorney

10/15/2010
Dated: _____

/s/ Lucinda S. Woolery

Lucinda S. Woolery
Assistant United States Attorney

I have consulted with my attorneys and fully understand all of my rights with respect to the offenses charged in the Information. 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.

10/15/2010
Dated: _____

/s/ Kevin Martin Cummings

Kevin Martin Cummings
Defendant

We are defendant Kevin Martin Cummings' attorney. We have fully explained to him his rights with respect to the offenses charged in the Information. Further, we have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. We have carefully reviewed every part of this plea agreement with him. To our knowledge, Kevin Martin Cummings' decision to enter into this plea agreement is an informed and voluntary one.

10/15/2010
Dated: _____

/s/ James R. Hobbs

James R. Hobbs
Attorney for Defendant

10/15/2010
Dated: _____

/s/ Marilyn B. Keller

Marilyn B. Keller
Attorney for Defendant