

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	Criminal No. 06-cr-898
	:	Filed: 9/29/2006
v.	:	
ANTHONY SPADOLA,	:	Violations: 15 U.S.C. § 1
	:	18 U.S.C. § 371
	:	26 U.S.C. § 7201
Defendant.	:	

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INFORMATION

The United States of America, acting through its attorneys, charges:

1. Anthony Spadola ("Spadola") is hereby made a defendant on the charges stated below.

COUNT ONE -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

I. RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Spadola resided in Morganville, New Jersey.

3. Spadola was employed by Mount Sinai School of Medicine and The Mount Sinai Hospital (collectively, "Mount Sinai"), a teaching hospital located in New York, New York, as an Information Technology Manager in Mount Sinai's Information Technology department from August 2000 until July 2003. In July 2003, Spadola became an employee of International Business Machines, Corp. ("IBM") but maintained the same

job title and performed the same job within the same department at Mount Sinai, pursuant to a contract between IBM and Mount Sinai. In April 2001, Spadola opened a bank account under the name of a consulting company that was primarily used to conceal his receipt of illegal payments from vendors to Mount Sinai.

4. "CC-1" was a co-conspirator who was a vice president of a company located in Manhattan, New York that supplied telecommunications equipment and services to Mount Sinai ("Vendor 1"). CC-1's wife was the President and owner of Vendor 1, although CC-1 was primarily responsible for the management of the company.

5. "CC-2" and "CC-3" were co-conspirators who jointly owned a company located in Great Neck, New York that supplied telecommunications equipment and services to Mount Sinai ("Vendor 2").

6. "CC-4" was a co-conspirator who was employed by Mount Sinai as a Network Management Professional in Mount Sinai's Information Technology department from October 2000 until July 2003. In July 2003, CC-4 became an employee of IBM but maintained the same job title and performed the same job within the same department at Mount Sinai, pursuant to a contract between IBM and Mount Sinai. His job title changed to Technical Services Professional in October 2004. In May 2003, CC-4 opened a bank account under the name of a consulting company that was primarily used to conceal his receipt of illegal payments from vendors to Mount Sinai. As a Network Management Professional, and later as a Technical Services Professional, CC-4 was supervised by Spadola but was also separately responsible for ensuring that contracts were awarded in

accordance with Mount Sinai's policies and procedures and reviewing and authorizing invoices for payment.

7. Various other persons, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

II. BACKGROUND

8. The Mount Sinai Hospital is a 1,171-bed tertiary-care teaching hospital with a medical staff of nearly 1,800, serving the metropolitan New York area. Mount Sinai School of Medicine performs clinical and basic-science research, in addition to its medical education function. Jointly, both entities operate an Information Technology department located within the Mount Sinai Medical Center on Madison Avenue.

9. Mount Sinai's Information Technology department served the various departments and facilities within Mount Sinai by assisting them in creating and maintaining their telecommunications infrastructures. This included selecting and contracting with third parties that were vendors of telecommunications equipment and services in order to install equipment such as voice and data cables in Mount Sinai facilities.

10. Mount Sinai had a competitive bidding policy that required the Information Technology department to obtain at least three competitive bids before entering into any single contract for goods or services in excess of \$10,000, and then award those contracts to the lowest responsible bidder. The purpose of the bidding policy was to ensure that the

Information Technology department obtained products and services at competitive, fair market prices.

11. As the Information Technology Manager, Spadola was responsible for obtaining bids from vendors of telecommunications equipment and services before contracts were awarded in accordance with Mount Sinai's policies and procedures, including adhering to Mount Sinai's competitive bidding policy. In addition, Spadola was responsible for supervising these vendors and reviewing and authorizing their invoices for payment. As a manager, Spadola sometimes delegated these tasks to individuals he supervised, including CC-4.

12. Spadola and his co-conspirators attempted to create the appearance that the Information Technology department was awarding contracts in compliance with Mount Sinai's competitive bidding policy when, in fact, it frequently was not. In actuality, Spadola determined in advance which contracts to allocate to Vendor 1 or Vendor 2, and then, in order to make it appear that contracts had been awarded based on competitive bids, Spadola and CC-4 at times arranged to receive bids with intentionally high prices (i.e., cover bids) from either Vendor 1 or Vendor 2. Spadola and CC-4 sometimes specified what prices should be quoted on these cover bids, and that the bids be backdated. On other occasions, Spadola and CC-4 allocated contracts without obtaining multiple bids or irrespective of whether the vendor to which the contract was allocated was the lowest responsible bidder. At the time, Spadola and CC-4 were receiving payments from Vendor 1 and Vendor 2.

13. Mount Sinai maintained a written “conflict of interest” policy prohibiting employees and contractors, including Spadola, from accepting gifts (other than of token value) from vendors or from entering into business arrangements with vendors. In July 2000, before he was hired by Mount Sinai, Spadola signed an acknowledgment that he had reviewed this “conflict of interest” policy.

14. At no time did Spadola or his co-conspirators disclose to Mount Sinai Spadola’s receipt of the payments from Vendor 1 and Vendor 2. All such payments were made without the knowledge or approval of Mount Sinai, and in violation of Spadola’s duty of loyalty to Mount Sinai.

III. TRADE AND COMMERCE

15. From approximately January 2001 through October 2004, pursuant to contracts that are the subject of this Count, Mount Sinai purchased approximately \$2,089,000 in telecommunications equipment and services from Vendor 1 and Vendor 2.

16. During the period covered by this Count, Vendor 1 and Vendor 2 supplied telecommunications equipment and services to Mount Sinai, including materials produced pursuant to contracts that are the subject of this Count, which were shipped across state lines, in a continuous and uninterrupted flow of interstate commerce, in the form of voice and data cables and other equipment obtained from distributors located outside the State of New York.

17. The activities of the defendant and co-conspirators with respect to the sale of telecommunications equipment and services to Mount Sinai, including the sale of voice

and data cables and other equipment pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

IV. DESCRIPTION OF THE OFFENSE

18. From approximately January 2001 through October 2004, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

19. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of telecommunications equipment and services to Mount Sinai.

20. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Spadola designated in advance whether Vendor 1 or Vendor 2 would be the low bidder on certain contracts to supply telecommunications equipment and services to Mount Sinai;

(b) Spadola and co-conspirators discussed and agreed on the prices that would be bid on contracts to supply telecommunications equipment and services to Mount Sinai;

(c) Spadola and CC-4 submitted, or caused Vendor 1 and Vendor 2 to submit, intentionally high, noncompetitive bids (i.e., cover bids) on certain contracts to supply telecommunications equipment and services to Mount Sinai, with the understanding that each vendor would be allowed to submit bids for, and under certain circumstances allocated other contracts with, Mount Sinai to supply telecommunications equipment and services. The intentionally high bids were submitted in order to make it appear that there had been competition for Mount Sinai contracts when, in fact, there had not; and

(d) Spadola and CC-4 allocated other contracts between Vendor 1 and Vendor 2 in violation of Mount Sinai's competitive bidding policy by either failing to obtain competitive bids or awarding contracts to either Vendor 1 or Vendor 2 regardless of whether that vendor was in fact the lowest qualified bidder, or otherwise manipulating bids so as to justify an allocation to either Vendor 1 or Vendor 2 while making it appear that there had been competition for Mount Sinai contracts when, in fact, there had not;

(e) Spadola and co-conspirators allocated other, smaller contracts between Vendor 1 and Vendor 2 and did not seek alternative vendors; and

(f) Spadola received substantial payments from CC-1, CC-2, CC-3, or the companies they represented, for his role in allocating contracts between Vendor 1 and Vendor 2.

21. As a result of the aforementioned conspiracy, Mount Sinai paid more for the telecommunications equipment and services it purchased pursuant to the contracts that are

the subject of this Count than it would have had the contracts instead been awarded pursuant to truly competitive bidding, or an otherwise competitive process, where free and open competition among vendors existed, and had there been no payments to the defendant by CC-1, CC-2, CC-3, or the companies they represented. In addition, other legitimate vendors of telecommunications equipment and services were foreclosed from selling to Mount Sinai.

V. JURISDICTION AND VENUE

22. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

COUNT TWO -- CONSPIRACY (18 U.S.C. § 371)

VI. THE RELEVANT PARTIES AND ENTITIES

The United States of America further charges:

23. Paragraphs 1 through 14 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

VII. DESCRIPTION OF THE OFFENSE

24. From approximately January 2001 until approximately September 2003, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, Spadola, CC-1, CC-2, CC-3, and others known and unknown, unlawfully,

willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to defraud the United States or an agency thereof, namely the Internal Revenue Service, and to commit offenses against the United States of America, to wit, to violate Title 18, United States Code, Sections 1952(a)(3)(A), 1341, and 1346, and Title 26, United States Code, Section 7206(1), in violation of Title 18, United States Code, Section 371.

25. It was a part and object of the conspiracy that Spadola, CC-1, CC-2, CC-3, and others known and unknown, unlawfully, willfully, and knowingly would and did travel in interstate commerce and use the mails and facilities in interstate commerce, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of unlawful activity, specifically, commercial bribery in violation of New York State Penal Law Sections 180.00, 180.03, 180.05, and 180.08, and, thereafter, would and did perform and attempt to perform an act to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of such unlawful activity, in violation of Title 18, United States Code, Section 1952(a)(3)(A).

26. It was further a part and an object of the conspiracy that Spadola, CC-1, CC-2, CC-3, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud Mount Sinai, including a scheme to deprive Mount Sinai of its intangible right of honest services of its employees and agents, and for obtaining money and property from Mount Sinai by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such

scheme and artifice to defraud, and attempting to do so, would and did place in post offices and authorized depositories for mail matter, and would and did deposit, and cause to be deposited, matters and things to be sent and delivered by the Postal Service and by private and commercial interstate carriers, and would and did take and receive such matters and things therefrom, and would and did cause such matters and things to be delivered by mail and by such carriers according to the directions thereon, and at the places at which they were directed to be delivered by the persons to whom they were addressed, in violation of Title 18, United States Code, Sections 1341 and 1346.

27. It was further a part and object of the conspiracy that Spadola, CC-1, CC-2, and CC-3, and others known and unknown, did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree to defraud the United States of America and the Internal Revenue Service ("IRS") by impeding, impairing, defeating, and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection of federal income taxes, and to commit offenses against the United States, to wit, to make and subscribe U.S. Corporate Income Tax Returns, which income tax returns were not true and correct as to every material matter, in violation of Title 26, United States Code, Section 7206(1).

VIII. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

28. During all or some of the period from approximately January 2001 until September 2003, Spadola received kickbacks totaling approximately \$153,993 from Vendor 1 and Vendor 2. Vendor 1 and Vendor 2 each paid kickbacks in order to ensure that Spadola would allocate to it a portion of Mount Sinai's total purchases of telecommunications equipment and services, and that Spadola would not seek alternative vendors of telecommunications equipment and services for such contracts. By paying the kickbacks, Vendor 1 and Vendor 2 were able to maintain non-competitive prices because they did not face open and honest competition from other vendors. Also, on at least one occasion, Spadola and CC-4 instructed a vendor to fraudulently inflate invoices and to pay Spadola the inflated amount, which the vendor did. As a result, Mount Sinai was deprived of its right to the honest services of Spadola and CC-4 paid higher prices for the telecommunications equipment and services it purchased than it would have if Spadola and CC-4 had aggressively and honestly solicited competitive prices from other vendors, and had not approved fraudulently inflated invoices for payment.

29. In approximately April 2001, Spadola established a checking account in the name of Ergonomics, Inc. ("Ergonomics"). Ergonomics was a corporate entity used to help conceal Spadola's receipt of kickbacks from Vendor 1 and Vendor 2. From July 2001 until September 2003, Spadola deposited checks issued by Vendor 1 and Vendor 2, some of which he received in Manhattan, into the Ergonomics account. These checks totaled approximately \$153,993 and were the only substantial deposits into the account. Nearly all checks written by Spadola and his spouse from the Ergonomics account were

for Spadola's personal and family expenses. The kickback payments by Vendor 1 and Vendor 2 to Spadola ceased once Spadola became aware that Mount Sinai had begun an internal investigation of the Information Technology department in the fall of 2003 relating to purchases from vendors of telecommunications equipment and services.

30. In the case of Vendor 1, the amounts of the kickback payments were typically calculated as a percentage of sales made by Vendor 1 to Mount Sinai, while in the case of Vendor 2, the payments were typically based on the amount of fraudulent overcharges added to Vendor 2's invoices, which were paid by Mount Sinai.

31. In approximately March 2002, Spadola and CC-4 allocated a contract to install telecommunications equipment for Mount Sinai's Radiation Oncology department to Vendor 2. Spadola and co-conspirators rigged the bids for the job by causing Vendor 1 to submit an inflated cover bid. Additionally, Spadola and CC-4 instructed Vendor 2 to fraudulently inflate invoices related to the Radiation Oncology job by \$10,000, and then caused Mount Sinai to pay Vendor 2 for the fraudulently inflated invoices. Mount Sinai completed payment to Vendor 2 for performing Radiation Oncology job in December 2002 and, shortly thereafter, Vendor 2 wrote two checks totaling \$10,000 to Ergonomics, which Spadola then deposited into the Ergonomics bank account. Spadola then generated two false and fraudulent invoices to make it appear as if the \$10,000 payments were for legitimate consulting services rendered by Ergonomics. These invoices made it possible for Vendor 2 to improperly deduct its payments to Ergonomics as legitimate business expenses on its US corporate income tax returns. In January 2003, Spadola issued a

\$5,000 check from his Ergonomics bank account to CC-4 for his assistance in rigging the bids, allocating the contract, and arranging for the inflated invoices to be paid by Mount Sinai for the Radiation Oncology job.

32. In approximately June 2002, Spadola and CC-4 allocated to Vendor 1 a contract to install telecommunications equipment in a Mount Sinai emergency room facility called the “ED Project.” Spadola discussed and agreed in advance with a representative of Vendor 1 that Vendor 1 would be allocated the “ED Project” contract for a specified inflated price. Spadola told the representative of Vendor 1 to submit a bid with the inflated price, and instructed CC-4 to get other vendors to submit bids with higher, non-competitive prices (i.e., cover bids). As a result, Vendor 1 was awarded the “ED project” contract for \$295,000.

33. Spadola generated fraudulent invoices from Ergonomics purporting to charge Vendor 1 and Vendor 2 for legitimate consulting services in the amounts of the kickback payments and gave those invoices to Vendor 1 and Vendor 2 so that they could falsely claim the payments as legitimate business expenses on their corporate income tax returns.

IX. OVERT ACTS

34. In furtherance of the conspiracy and to effect the illegal objects thereof, the defendant, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On numerous occasions between approximately January 2001 and

September 2003, pursuant to the conspiracy charged, Spadola and his co-conspirators caused Mount Sinai to issue purchase orders, and caused Vendor 1 and Vendor 2 to issue invoices, relating to the sale of telecommunications equipment and services to Mount Sinai. Some of these invoices and purchase orders were sent through the United States mails. Many of these invoices were sent to Mount Sinai's offices in Manhattan and many of these purchase orders were sent from its offices in Manhattan;

(b) On numerous occasions between approximately January 2001 and September 2003, pursuant to the charged conspiracy, Spadola and his co-conspirators caused Mount Sinai to issue checks in payment of these invoices to Vendor 1 and Vendor 2. Some of these invoices and checks were sent through the United States mails; and

(c) On numerous occasions between approximately January 2001 and September 2003, pursuant to the conspiracy charged, Spadola generated fraudulent invoices from Ergonomics purporting to charge Vendor 1 and Vendor 2 for legitimate consulting services in the amounts of the kickback payments and gave those invoices to Vendor 1 and Vendor 2.

COUNT THREE-- TAX EVASION
(26 U.S.C. § 7201)

The United States of America further charges:

35. Paragraphs 1 through 3 of Count One and Paragraph 28 of Count Two of this Information are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

36. Spadola did not report his receipt of a substantial portion of the value of the money that he received from Vendor 1 and Vendor 2 on his U.S. Individual or Ergonomics's Corporate Income Tax Returns. In addition, Spadola claimed substantial illegitimate business deductions on his corporate and individual United States income tax returns. As a result, those tax returns substantially underreported the taxable income and the correct amount of tax due and owing from Spadola.

37. On or about the filing dates set forth below, in the Southern District of New York and elsewhere, Spadola, unlawfully, knowingly and willfully, did attempt to evade and defeat a substantial part of the income tax due and owing by him and his spouse to the United States of America for the tax years set forth below by various means, including, among other things, by preparing and causing to be prepared, by signing and causing to be signed, and by filing and causing to be filed with the Internal Revenue Service, false and fraudulent United States Individual Income Tax Returns, Forms 1040, and United States Corporate Income Tax Returns, Forms 1120S, for each of the calendar years 2001, 2002, and 2003, wherein (1) Spadola failed to report as income kickbacks he had received from CC-1, CC-2, CC-3, or the companies they represented, as set forth in Paragraph 26 of this Information, and (2) Spadola falsely claimed on his United States Corporate and Individual Income Tax Returns that certain expenses were legitimate business expenses when, in fact, they were not, and thus falsely stated that his taxable income was in the amounts set forth below, and that the amount of tax due and owing thereon was in the amounts set forth below, whereas, as Spadola then and there well knew and believed, the

correct taxable income and correct tax due and owing for those calendar years was substantially in excess of the amounts reported, as set forth below:

<u>Filing Date</u>	<u>Tax Year</u>	<u>Reported Taxable Income</u>	<u>Reported Tax Due and Owing</u>	<u>Corrected Taxable Income</u>	<u>Additional Tax Due and Owing</u>
2/22/02	2001	\$76,980	\$14,318	\$104,712	\$ 8,828
4/10/03	2002	\$100,543	\$29,751	\$205,188	\$30,251
2/08/04	2003	\$55,227	\$7,543	\$123,626	\$18,941

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7201

Dated:

/s/
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Assistant Attorney General

/s/
RALPH T. GIORDANO
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