

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION**

UNITED STATES OF AMERICA

v.

PHILLIP NATHAN MARKS

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**Case No. _____
18 U.S.C. §§ 371, 1347**

PLEA AGREEMENT

The government and the defendant, **PHILLIP NATHAN MARKS**, hereby acknowledge the following plea agreement in this case:

PLEA

The defendant agrees to **(1)** plead guilty to **COUNTS 1 *through* COUNT 13** of the Information filed in the above numbered and captioned matter; and **(2)** the immediate entry of an order of forfeiture in the amount of \$433,935. In exchange, the United States Attorney, acting on behalf of the government and through the undersigned Assistant United States Attorney, agrees to recommend the disposition specified below, subject to the conditions in Sections IX and X.

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employer by having **PRESCRIBER #4's** prescriptions sent to TPS, Global's affiliate pharmacy.

2. Directed Scripts

Defendant **MARKS** and other co-conspirators regularly instructed Global employees to obtain prescriptions for Global's highest reimbursing products for themselves and their family members, not to meet their legitimate medical needs, but rather, to obtain commission payments and to maximize Global and its affiliate pharmacies' profits. To incentivize employees to obtain these medically unnecessary prescriptions (including refills), Global paid them a portion of the profits of each prescription as commission. (As set out later, Global routinely waived employee co-pays to further incentivize these employees to obtain these prescriptions.)

Some of the high reimbursing prescription drugs included:

- a. Silapak, also referred to as PharmaPak, a product Global's marketing flyer described as a "topical Skin Repair Complex . . . designed to provide relief for irritating skin conditions caused by numerous etiologies such as eczema, allergic reactions, irritating keloid and hypertrophic scars, psoriasis, and allergic reactions." The flyer further stated that "Silapak is not indicated for pregnant women or children."
- b. Active Prep Kit II ("APK II"), advertised as an in office compounding kit for anti-inflammatory and analgesic treatment.
- c. Lidocin, advertised as a pain cream for cuts, scrapes, and minor skin irritations.

- d. Medi-Derm Rx, advertised as a topical pain cream.
- e. Ortho-D, advertised as a Vitamin D supplement.
- f. Surgical Combo Pak, a pre-operative wash and post-operative wound medication. (As per Global's marketing materials, this medication was to be used pre- and post-surgery.)
- g. Inflammator Pak, comprising of an anti-inflammatory tablet and cream.

In or about mid-2015, defendant **MARKS** began regularly issuing these directives by email and other means. During this time-period, many of the directives focused on non-compounded (pre-manufactured) drugs, because defendant **MARKS** knew that PBMs had begun taking steps to curtail the rampant overbilling for compounded drugs. Some of his directives are described below:

- **Silapak/Pharmapak:** On July 7, 2015, defendant **MARKS** sent an email to district managers, stating "We are looking at a new product called Pharmapak[/Silapak]. Right now[,] we know it is covered by BCBS of AI, our insurance. The profit on this is \$2700. We need every rep to get a script for themselves for this." He followed up with multiple additional emails instructing employees to get Silapak prescriptions for themselves and family members on an almost daily basis for the *next 10 days, sometimes more than once a day, sometimes on weekends*. On July 12, 2015, defendant **MARKS** further solicited (and obtained) a medically unnecessary Silapak prescription for himself from an outside sales representative who was married to a Prescriber, explaining "We need everyone in the company to get one for themselves. Lots of profit."

Global's own marketing flyer stated that Silapak was "not indicated for . . . children." With defendant **MARKS** knowledge, Global outside sales representatives nonetheless submitted Silapak prescriptions for children and Global shipped the Silapak to these children. On July 17, 2015, defendant

MARKS received an email in which **PHARMACIST #2** described the potential harm that could result from children using Silapak, stating in part “if overdosed or used inappropriately steroids can cause adrenal crisis in children.” With defendant **MARKS**’ knowledge, Global nonetheless continued to ship Silapak to children after this date.

- **APK II and Lidocin Drugs:** On July 21, 2015, defendant **MARKS** sent an email to district managers, stating “With BCBS AL covering the APK II and Lidocin, we can really jump start the month. We need every rep and DM to get a script for both themselves, spouses and any family that [insurance] will cover. I would like everyone to have one in by the end of the week. Go get em.” Defendant **MARKS** sent multiple additional instructions to district managers with similar instructions. On July 21, 2015, he further solicited (and obtained) medically unnecessary APKII and Lidocin prescriptions for himself from an outside sales representative who was married to a Prescriber.
- **Inflammatrol Pak or Surgical Combo Pak:** On July 9, defendant **MARKS** emailed **DISTRICT MANAGER #2** stating “BCBS of [Minnesota] covers everything. . . . One is the Sil[a]Pak which I already sent out. The others are Surgical ComboPak and Inflammatrol Pak. The PROFIT on these is [1.] Inflammatrol Pak - \$1,800; [2.] Surgical ComboPak - \$2,727. [**OUTSIDE SALES REPRESENTATIVE # 5**], needs to get her own script for all of this and for all her and her husbands [**COMPANY #1**] friends.” Then, on July 12, 2015, defendant **MARKS** sent an email to Texas-based outside sales representatives with an “individual challenge,” urging them to get the Silapak, Inflammatrol and Surgical Combo (*intended for surgery patients*) paks for themselves and spouses. He added “when you factor in your commission holy cow this could be huge.”
- **Other Drugs:** On July 27, 2015, defendant **MARKS** sent an email to district managers, stating “[S]o I have been doing some basic math . . . If we do 250 adjudicated APK II and Lidocin that equals \$1 mil [revenue]. If every employee gets one for themselves and one for spouse that’s at least 65-70. . . . Please call your reps individually and make sure we get those in ASAP. . . . SilaPak, APK II, Lidocin, MediDerm, [pain spray], [pain patch], Texas – Inflammatrol Pak, Surgical Combo Pak. Go get em.”

Global and its affiliate pharmacies billed PBMs and those PBMs paid Global

for these medically unnecessary and otherwise fraudulent prescriptions. For instance, for the listed drugs below, for the below time-periods, Global and its affiliate pharmacies' employees billed Prime and other PBMs (where family member insurance plans were administered through those PBMs) for approximately the below-listed number of Global employees and employee family members for the below-listed approximate amounts and were paid the below listed approximate amounts.

Drug	# of Employee /Family Rxs	Time Period	Amount Billed	Amount Paid
Silapak	83	07/08/2015-09/23/2015	\$885,012.09	\$751,987.17
Lidocin/Lidovex	42	07/20/2015-11/30/2015	\$276,076.00	\$230,038.00
APK II	36	07/22/2015-09/17/2015	\$92,013.00	\$74,433.00
Camphomex (pain spray)	31	06/11/2015-11/30/2015	\$205,706.00	\$170,674.00

Defendant **MARKS'** efforts resulted in significant revenue to Global. For instance, on August 28, 2015, **MANAGEMENT PERSON #4** sent an email to **MANAGEMENT PERSON #1** and defendant **MARKS**, summarizing revenue for *just* July 21, 2015 to August 28, 2015 – *one month*. It stated that Global's revenue from billing 1,741 "patches/sprays/gels/kits" prescriptions was **\$3,150,339.04**, as compared to \$527,881.65 for 1,501 compounded drug prescriptions.

3. *Forged or Otherwise Questionable Prescriptions*

Defendant **MARKS** knew that outside sales representatives were submitting forged or otherwise fraudulent prescriptions. As the individual with oversight over district managers and outside sales representatives, he had a responsibility to put a stop to this behavior, but did not. For instance:

- On February 27, 2015, **PHARMACIST #1** emailed defendant **MARKS** stating “I’m sending you a reminder about what we discussed in the meeting regarding the sex creams. . . .We don’t need to do more than 30 grams for 30 days. Also, one patient should not be receiving a sex cream for both male and female....”
- On March 13, 2015, defendant **MARKS** informed other members of management that **OUTSIDE SALES REPRESENTATIVE #3** single handedly brought in 60 new prescriptions for a metabolic/weight loss drug in *one day*.
- On April 13, 2015, a sales representative sent a resignation letter, which was forwarded to defendant **MARKS**. Referring to **OUTSIDE SALES REPRESENTATIVE #3**’s practices, it stated “A sales consultant can’t continue to fill out a Doctor’s/NP’s prescription forms and just have the Dr/NP rubber stamp . . . a patient isn’t going to need a year’s worth of wound cream medically it could be month to month or even week to week.”
- Rather than take action, on June 9, 2015, defendant **MARKS** emailed district managers “We need 100 patches today no questions asked. Whatever you have to do make it happen.”
- On June 29, 2015, defendant **MARKS** received an email stating that several patients of **OUTSIDE SALES REPRESENTATIVE #3**’s primary Prescriber called the pharmacy to complain that they had not seen the doctor in months and had seen the doctor for an issue other than what the prescribed drug addressed (*e.g.*, the patient saw the doctor for weight loss, but received a pain patch).

- On October 22, 2015, defendant **MARKS** received an email from **MANAGEMENT PERSON #4** stating, “Just FYI, we’re hearing a lot of wording from pt’s saying “I haven’t seen that Dr in a year! Why would they send you a prescription?” The complaints primarily came from patients of two Prescribers associated with **OUTSIDE SALES REPRESENTATIVE #3 and #4**. The email explained that one patient said [**OUTSIDE SALES REPRESENTATIVE #4**], a friend, “asked him for a pic of his insurance card, but [] never told him what for, then medication shows up at his door,” and that the patient had never seen the Prescriber.
- Defendant **MARKS** again took no real action to address these concerns. Instead, on November 2, 2015, he sent an email to **OUTSIDE SALES REPRESENTATIVES #3 and #4** and another outside sales representative, in which he announced a “contest.” To win, contestants had to bring in a minimum of 1,000 prescriptions that month, but also had to bring in more prescriptions than **OUTSIDE SALES REPRESENTATIVE #3** (about whom there had been numerous concerns raised). The email added “Prizes: The winner will get to fly with CEO to Vegas on a Private plane. ALL expenses paid, 5k shopping spree and a ticket for Brooks and Dunn at Ceasar’s Palace.”
- On January 28, 2016, April 4, 2016, and May 10, 2016, defendant **MARKS** was informed of more/similar patient complaints regarding the prescriptions **OUTSIDE SALES REPRESENTATIVE #3** was sending in. He continued to take no real action to address this conduct.

4. Co-Pays Waived

Insurance providers require pharmacies to collect co-pays, typically a fixed amount, from patients, in part so that the patient has “skin in the game,” and is motivated to decline medically unnecessary or otherwise fraudulent prescriptions. However, to incentivize patients, including employees and their family members to

obtain or retain the medically unnecessary drugs Global was sending to them, **MANAGEMENT PERSON #1** and others would cause Global to routinely waive patients' co-pays. Global did so in a variety of ways, including: (1) telling patients they did not have to pay co-pays; (2) telling patients that Global would cover whatever portion of patients' co-pays that they could not pay; (3) paying a portion of patients' co-pays; (4) making little or no effort to collect co-pays, including failing to ask patients for co-pays and sending multiple refills to patients regardless of whether they had paid past co-pays; and (5) informing patients that Global would never send them to a collection service if they failed to pay their co-pays. For employees and their family members, Global managers would also tell employees that they could use their Global credit cards to pay for co-pays for drugs dispensed by Global.

The evolution of co-pays waiver practices, which defendant **MARKS** was fully aware of and helped direct, were summarized in an on or about May 13, 2015 text message defendant **MARKS** received from **OUTSIDE SALES REPRESENTATIVE #3** who was frustrated over a change in Global's co-pay collection practice: "How do we go from having a waiver program for copays, then to just tell them to bill the patient and if they get a bill, to just throw [i]t away because that's how we can legally waive copays, to you owe \$900 [(total co-pays for multiple drugs)] and will be responsible for paying it!!! . . . Instead of making money, we are

LOSING money.” (On the same day, **MANAGEMENT PERSON #4** reassured defendant **MARKS** that “The message we are telling [patients] is if they can pay something, that’s all we’re asking for” and that patients were being reminded that Global would not stop their refills or send them to collections.)

Examples of defendant **MARKS**’ knowledge of, participation in and direction of this aspect of the scheme are:

- On January 20, 2015, soon after he became Regional Sales Director, defendant **MARKS** received an email addressing co-pays, which stated “please note that every person will get a bill – it is our legal obligation. . . . Even if we fill an order for a doc, we have to bill them. As reps we need to explain that to them, and tell them to discard it – but legally we have to bill them.”
- On March 25, 2015, defendant **MARKS** exchanged emails in which he rejected a proposal to “track” those patients who Global purportedly put on a co-pay payment plan.
- On May 7, 2015, defendant **MARKS** emailed district managers stating “I was asked on a couple of calls today if we are sending bills with the patients prescriptions and we are NOT!!”
- In or about June 2015, he helped formulate Global’s co-pay policy, which allowed Global to ship prescriptions *without* speaking to patients if the co-pay for one drug was under \$100. That amount was chosen because it was *above* the co-pay amount for the majority of prescriptions Global received, which effectively meant Global could almost always send out prescriptions without speaking to patients. In practice, even that \$100 limit was ignored.
- In July 2015, defendant **MARKS** directed employees to use their *Global* credit cards to make co-pays. (In May 2015, following inquiries from PBMs into Global’s co-pay collection practices, **MANAGEMENT PERSON #1** and others started instructing employees to use their Global credit cards to make co-pays so as to

conceal Global's routine co-pay waiver practices from PBMs.)

- On November 11, 2015, defendant **MARKS** emailed various Global employees regarding co-pays, and stating "We do not send people to collections. . . . Again, we do not send people to collections."

Further, as with other Global employees, Global waived the co-pays for defendant **MARKS** and a family member, **PATIENT #9**. For the time-period November 2014 through June 2016, Global waived co-pays totaling over \$5,212.00 for defendant **MARKS** and **PATIENT #9** for the approximately 513 prescription shipments (initial fill and refills) Global and its affiliate pharmacies shipped to them.

5. Automatic Refills

Defendant **MARKS** also was aware of and helped direct Global and its affiliate pharmacies' practice of automatically refilling patient prescriptions regardless of patient need. For instance:

- In May 2015, **PATIENT #17** based in Arkansas, complained to Global and also subsequently Arkansas law enforcement authorities that Global's automatic refill policy resulted in the shipment of approximately \$110,000 worth of unwanted refills to her husband and child. In response to inquiries into these billings, a Global representative wrote a letter to Arkansas state law enforcement authorities stating that Global had revised its automatic refill policy, "Now the pharmacy requires all refills to have verbal approval from the patient or requires the patient to affirmatively elect to enroll in the auto-refill program." On May 15, 2015, defendant **MARKS** subsequently received Global's "updated" refill policy, which stated that refills would "require verbal approval from the patient."
- On August 20, 2015, defendant **MARKS** was forwarded an email sent by **PATIENT #8**, complaining that he received multiple shipments,

including refills, from Global while he was away on an extended vacation. The patient noted that the drugs were left in his garage, and would not have “survived the many weeks of 100 degree heat that we have experience[d] in Wyoming this summer.” The patient further stated “I have never authorized any of these prescriptions, neither verbally nor more importantly by signature.” Global’s records show that Global shipped four prescriptions for various products, as well as refills, and that Global did not reverse the charges after receiving the above email.

- On January 21, 2016, defendant **MARKS** participated in an email exchange in which he and others discussed the need for a “plan” to slow down TPS’s billings in order to avoid PBM scrutiny. One proposal put forward was “For the remainder of the month, we go back to calling patients for refills before sending. This will slow us down a bit.”
- On March 25, 2016, **MANAGEMENT PERSON #4** informed defendant **MARKS** that Tropic Pharmacy was not automatically refilling patient prescriptions because patients “get mad” and “don’t use [the drugs] up in 30 days.” Defendant **MARKS** responded “I still think we need to auto refill. We need to get to at least \$500k this month.”

6. Concealment

Defendant **MARKS** helped conceal Global and **MANAGEMENT PERSON#1**’s involvement in Global’s affiliate pharmacies so as to ensure that Global could continue its fraudulent practices while avoiding or delaying detection by PBMs. This concealment typically took one of two forms: (1) **MANAGEMENT PERSON #1** would purchase a new pharmacy, with Global employees serving as paper/sham owners, *i.e.*, **MANAGEMENT PERSON #1** would provide most, and in some cases, all of the funding for the purchase of pharmacies and retained primary decision-making authority; or (2) Global transferred prescriptions to other

pharmacies, which then billed on Global's behalf. The affiliate pharmacies would forward payments from PBMs to Global, sometimes through an intermediary entity (which was not a pharmacy and was owned by **MANAGEMENT PERSON #1**), set up to facilitate **MANAGEMENT PERSON #1's** management of multiple pharmacies.

Two pharmacies that were purchased in the above manner were TPS, located in Haleyville, Alabama, and Tropic, in Boca Raton, Florida:

- **TPS:** In May 2015, Prime conducted an audit finding multiple billing issues and seeking recovery of approximately \$576,000 from Global. Also in May, Prime informed Global that it would be terminated from Prime's network effective September 4, 2015, because of its "poor audit performance evidencing failure to comply with Prime's terms and conditions." In August 2015, **MANAGEMENT PERSON #1**, defendant **MARKS** and other co-conspirators caused TPS to obtain Prime coverage and caused Global to begin transferring prescriptions for Prime beneficiaries to TPS. At **MANAGEMENT PERSON #1's** direction, two Global employees became the listed/sham owners of TPS. Defendant **MARKS** knew that the purpose of this arrangement was to conceal from PBMs **MANAGEMENT PERSON #1** and Global's involvement in TPS. Many of Global's outside sales representatives became TPS's employees (with BCBSAL health insurance), and Global's inside sales representatives assisted TPS with billing.
- **Tropic:** In November 2015, the Alabama Board of Pharmacy issued an emergency suspension of Global's pharmacy license. Partly because of this suspension (and the various other actions taken against Global by PBMs and PSAOs) **MANAGEMENT PERSON #1** and others feared that PBMs and PSAOs would exclude from their insurance networks any pharmacy with which **MANAGEMENT PERSON #1** was affiliated. Thus, in or about March 2016, defendant **MARKS** purchased Tropic as the paper/sham owner for **MANAGEMENT PERSON #1**. Defendant **MARKS** continued in essentially the same role as with Global. That is,

he participated and directed others' conduct, but ultimately answered to **MANAGEMENT PERSON #1**.

7. Mailings

Prescriptions Global processed were shipped to patients by Global and its affiliate pharmacies via USPS and UPS. For instance, on or about July 14, 2015, Global personnel mailed and caused to be mailed by UPS a shipment of Silapak to defendant **MARKS**. It was mailed from Global's Haleyville, Alabama location to Winter Park, Florida.

*8. Monies Paid to Global and Affiliate Pharmacies and Defendant **MARKS***

Global, TPS, and other affiliate pharmacies received payments from Prime and other PBMs for prescriptions, including those defendant **MARKS** generated or caused others to. These payments were sometimes made through PSAOs. For instance, on February 13, 2015, a PSAO (Good Neighbor) wire transferred approximately \$362,960.15 to Global's First Metro Bank account, which included payments for prescription drug claims submitted by Global to Prime. Also, on April 8, 2015, a PSAO (Good Neighbor) wire transferred approximately \$349,746.38 to Global's First Metro Bank account, which included payments for prescription drug claims submitted by Global to Prime. Each of these wire transmissions crossed state lines.

Further, Global paid defendant **MARKS** an annual base salary plus a monthly

TERMS OF THE AGREEMENT

I. MAXIMUM PUNISHMENT

The defendant understands that the maximum statutory punishment that may be imposed for the crime of conspiracy to commit health care fraud (18 U.S.C. § 1347), wire fraud (18 U.S.C. § 1343), and mail fraud (18 U.S.C. § 1341), in violation of Title 18, United States Code, Section 371, as charged in COUNT 1, is:

- a. Imprisonment for not more than 5 years;
- b. A fine of not more than \$250,000; or,
- c. Both (a and b);
- d. Supervised release of not more than 3 years; and
- e. Special Assessment Fee of \$100 per count.

The defendant further understands that the maximum statutory punishment that may be imposed for the crime of health care fraud, in violation of Title 18, United States Code, Section 1347, as charged in COUNTS 2 through COUNT 13, is:

- a. Imprisonment for not more than 10 years;
- b. A fine of not more than \$250,000; or,
- c. Both (a and b);
- d. Supervised release of not more than 3 years; and
- e. Special Assessment Fee of \$100 per count.

II. FACTUAL BASIS FOR PLEA

A. Pharmacies

Pharmacies dispense pre-manufactured and traditionally compounded (hereafter “compounded”) prescription drugs. Pre-manufactured medications are mass-produced for use by a large population of patients. They are purchased by a pharmacy in the same form in which the pharmacy dispenses it to patients. A compounded medication is a customized combination of medicines initiated and prescribed by a licensed prescriber for a specific patient, based upon the prescriber-patient relationship and taking into consideration the particular patient’s diagnoses, medical condition, individual health factors, and reaction to other medications.

The U.S. Food and Drug Administration (“FDA”) offers the following examples of when drugs would be compounded: (1) if a patient has an allergy and needs a medication to be made without a certain dye preservative; (2) if an elderly patient or child cannot swallow a pill and needs a medicine in a liquid form that is not otherwise available. Because traditionally compounded pharmaceuticals are custom made to fit the unique needs of each patient, the FDA does not pre-approve compounded medications and therefore does not verify the safety or effectiveness of compounded drugs prior to dispensing. In the state of Alabama, the Alabama Board of Pharmacy regulates the practice of pharmacy, including compounding.

B. Insurance Plans

Various entities, government and private, offer prescription drug benefits as part of health insurance plans. Blue Cross Blue Shield of Alabama (“BCBSAL”) is a private insurance company providing prescription drug insurance coverage in the state of Alabama and elsewhere. Medicare is a federally funded program that provides free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare programs covering different types of benefits are separated into different program “parts.” Part D subsidizes the costs of certain prescription drugs. TRICARE is a healthcare program of the United States Department of Defense (“DOD”) Military Health System that provides coverage for DOD beneficiaries worldwide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors. BCBSAL, Medicare and TRICARE provide coverage for certain prescription drugs and are “health care benefit programs” as that term is defined by Title 18, United States Code, Section 24(b), and used in Title 18, United States Code, Section 1347.

C. Third Party Administrators and Billing

A Pharmacy Benefit Manager (“PBM”) is a third party administrator of prescription drug programs, including privately or government insured drug plans, and acts on behalf of one or more prescription drug plans. A Pharmacy Services Administrative Organization (“PSAO”) is also a third party entity, which provides

various services such as contract negotiation and communication to pharmacies. Pharmacies may contract with PSAOs, which in turn contract with PBMs, such that PSAO member pharmacies may participate in a PBM network. A pharmacy could participate in a privately or government insured plan by entering an agreement directly with the insured plan, or indirectly by joining a PBM's pharmacy network through an agreement with a PBM or a PSAO.

When a pharmacy receives a prescription from a privately or government insured beneficiary, the pharmacy is to collect any applicable co-pay from the beneficiary, dispense the drug to the beneficiary, and submit a claim for reimbursement to the PBM that represents the beneficiary's insured drug plan. The pharmacy periodically receives payment for submitted claims from the Plan, PBM, or a PSAO. If payment is made by a PBM or PSAO, those entities are ultimately reimbursed, directly or indirectly, by the insured plan.

Prime Therapeutics ("Prime") is a PBM for BCBSAL and other insurance plans. Express Scripts Incorporated ("ESI") and CVS/Caremark are PBMs for various insurance plans. PBMs such as Prime, ESI and CVS/Caremark are "health care benefit programs," affecting commerce, as defined by Title 18, United States Code, Section 24(b), and as that term is used in Title 18, United States Code, Section 1347.

Leader Drug Stores, Inc. (hereafter, "Leader") and AmerisourceBergen

Elevate Provider Network (formerly Good Neighbor Pharmacy Provider Network) (hereafter, “Good Neighbor”) and others are PSAOs through which pharmacies could enter PBM’s pharmacy networks.

To become a PBM network pharmacy, a pharmacy agreed to be bound by, and comply with, all applicable State and Federal laws, specifically including those addressing fraud, waste, and abuse. A pharmacy also agreed to be bound by a PBM’s rules and regulations. These rules include prohibitions against fraudulent conduct, including submitting claims for invalid prescriptions, submitting claims in a way that bypasses PBM billing safeguards, paying kickbacks, and routinely waiving patient co-pays.

D. Global, Related Entities, and Individuals

Northside Pharmacy d/b/a Global Compounding Pharmacy (“Global”) was an Alabama company that provided pharmaceutical services and described itself as “one of the top three largest compounding pharmacies in the United States.” It operated from two locations. It compounded and shipped its pre-manufactured and compounded products from its pharmacy location, 922 20th Street, Haleyville, Alabama. It processed prescriptions – including initial receipt, billing, and patient contact – from its billing center located at 4700 140th Avenue North, Suites 111 and 112, Clearwater, Florida. The billing center was referred to as the “Clearwater Call Center.”

Global employed pharmacists, pharmacy technicians, and other employees who worked from the Haleyville, Alabama location. In addition, Global hired inside sales representatives (starting in August 2015, these individuals began obtaining pharmacy technician licenses in Alabama and Florida). These individuals worked at the Clearwater Call Center, and were generally responsible for billing and patient contact. Global also hired outside sales representatives, who worked from various locations throughout the United States, and were primarily responsible for generating prescriptions from prescribers. The outside sales representatives reported to regional district managers.

The individuals who worked at Global included, but were not limited to:

- **MANAGEMENT PERSON #1** was an owner, President, and Chief Executive Officer of Global;
- **MANAGEMENT PERSON #2** was an owner, Vice President, and Chief Operating Officer of Global, and resigned from Global on July 21, 2015;
- **MANAGEMENT PERSON #4** was Global's Inside Sales Manager, and supervised the Clearwater Call Center inside sales representatives;
- **PHARMACIST #1** was a Global pharmacist from at least November 2014 to June 2015, and was based out of Haleyville, Alabama.
- **PHARMACIST #2** was a Global pharmacist from approximately February 2015 to August 13, 2015, and was based out of Clearwater, Florida;
- **PHARMACIST #3** was a Global pharmacist from at least November 2014 to at least November 12, 2015. During that time and continuing through at least June 2016, he held other roles at Global and affiliate pharmacies,

including in directing pharmacy operations;

- **OUTSIDE SALES REPRESENTATIVE # 5** was an outside sales representative for Louisiana. She had health insurance by virtue of her husband's employment with **COMPANY #1**, a company that provided health insurance coverage to its employees through Blue Cross Blue Shield of Minnesota; and
- **Defendant PHILLIP NATHAN MARKS**, who is identified as "**MANAGEMENT PERSON #3**" in documents filed with the Court in related cases. He joined Global in November 2014 as a district/regional manager; on January 16, 2015, became Regional Sales Director; and at least by February 16, 2015 was Vice President of Sales. As of January 2015, he supervised district managers, who in turn supervised outside sales representatives, and was paid a base salary and a commission of 1% of profit on all sales (with certain exclusions). He was located in Winter Park, Florida.

Prior to joining Global in November 2014, defendant **MARKS** worked for many years in medical supply and equipment sales, including in managerial roles. He received compliance training in those roles.

MANAGEMENT PERSON #1 and other co-conspirators caused Global to engage with multiple affiliate pharmacies, which Global managers used to fill and bill for prescriptions when Global could not bill for them directly. Two such affiliates were: (1) Carrollton Pharmacy d/b/a The Prescription Shop ("TPS"), located at 41254 Highway 195, Haleyville, Alabama; and (2) Tropic Pharmacy Holding Corporation ("TPHC"), a holding company that owned RNA Prescription Services, Inc. d/b/a Tropic, in Boca Raton, Florida ("Tropic").

MANAGEMENT PERSON #1 and other co-conspirators caused Global and TPS to contract with BCBSAL to provide health insurance to employees and their

dependents, who were located in Alabama and elsewhere in the United States. Further, **MANAGEMENT PERSON #1** and other co-conspirators caused Global and affiliate pharmacies, including TPS and Tropic, to contract (including through PSAOs such as Leader and Good Neighbor), to participate in the pharmacy networks of various PBMs, including Prime, and to bill for prescription drugs through its contracts with these PBMs and PSAOs. Global and affiliate pharmacies shipped drugs from their Alabama and Florida locations to customers within and outside Alabama and Florida via United States Postal Service (“USPS”) and private and commercial interstate carriers such as United Parcel Service (“UPS”).

E. The Conspiracy

From in or about November 2014 and continuing until in or about at least June 23, 2016, defendant **MARKS** knowingly and willfully conspired, combined, and agreed with others known and unknown to the United States to commit healthcare fraud, wire fraud, mail fraud, against BCBSAL, Medicare, TRICARE, Prime, and others, in violation of Title 18, United States Code, Sections 371, 1347, 1343, and 1341.

Defendant **MARKS** and others’ conspiracy and scheme and artifice to defraud centered on generating and then billing PBMs for medically unnecessary or otherwise fraudulent prescriptions. The actions of the conspiracy and scheme included:

- Global managers hired as outside sales representatives individuals who were: (1) married or otherwise closely related to individuals with prescribing authority, including physicians, physician assistants and nurse practitioners (hereafter “Prescribers”); (2) Prescribers or worked in Prescribers’ offices; and/or (3) married to individuals employed by companies such as **COMPANY #1**, that **MANAGEMENT PERSON #1** and others had identified as having health insurance plans with high reimbursement rates.
- Global managers directed and encouraged the outside sales representatives to “work,” typically without pay, in Prescribers’ offices, including by reviewing patient files and pushing and promoting Global’s products to the Prescribers’ patients;
- Global managers directed their employees to obtain certain prescriptions, not to meet patients’ legitimate medical needs, but rather to obtain commission payments and to maximize Global and its affiliate pharmacies’ profits;
- Co-conspirators and co-schemers forged prescriptions for medications;
- Family member Prescribers were induced to prescribe medications to “patients” who were relatives;
- Medications were prescribed to “patients” who were not seen by, or did not have a patient relationship with Prescribers;
- Medications were prescribed to minor children “patients” for whom the medications were contraindicated;
- Medications were prescribed to “patients” who discarded the medications in the trash;
- Medications were intentionally filled over successive days at lower quantities than prescribed in order to evade PBM automated billing safeguards;
- Ingredients were added or deleted from compounded drugs and medications were added to or substituted to maximize profits and not to

meet patients' medical needs;

- Medications were automatically refilled regardless of patient need;
- Co-pays for medications were waived;
- False and misleading information was provided to PBMs to conceal many of these fraudulent practices; and
- Medications were billed using affiliate pharmacies, including when Global's fraudulent practices were discovered by PBMs.

Some of the ways in which defendant **MARKS** participated in the conspiracy and scheme are described in more detail below.

1. Hiring of Prescriber's Spouses/Relatives as Sales Representatives

Defendant **MARKS** understood that a key aspect of Global's scheme was the recruitment of outside sales representatives who were married or otherwise related to Prescribers. He understood that by hiring these sales representatives and paying them a commission for each prescription they brought in from their spouse/relative Prescriber, Global was directly and/or indirectly paying these Prescribers for each prescription they issued. He further understood that in light of the payments, these Prescribers would be incentivized to issue, and did in fact issue, medically unnecessary prescriptions. It was with this understanding that defendant **MARKS** himself solicited medically unnecessary prescriptions from the outside sales representative married to one such Prescriber for himself. It is also with this understanding that he instructed these spouse/relative outside sales representative to

obtain medically unnecessary prescriptions from their Prescriber spouse/relative either for themselves and their family members, or for that Prescriber's other patients.

Defendant **MARKS** was fully aware that the outside sales representatives with these relationships to Prescribers obtained the majority of their prescriptions from their spouse/relative Prescriber. For instance, at least as of March 2015, he was responsible for distributing commission reports (which he received from **MANAGEMENT PERSON #1**). These reports showed that the Prescriber issuing the majority of the prescriptions for which those outside sales representatives received credit (including for prescriptions paid for by Medicare and TRICARE) was the Prescriber to whom they were married or otherwise related.

Most of these sales representatives were hired prior to defendant **MARKS** joining Global. He, however, participated in targeting individuals with these relationships, including on September 24, 2015, when he exchanged emails with **DISTRICT MANAGER #1**, discussing potential hires and asking "What about that one Dr's wife we have talked about before?" He also participated in concealing these relationships, including when in May 2015, the employer of **PRESCRIBER #4** warned that Prescriber to stop writing prescriptions for which a family member would receive payment based on concerns about the Anti-Kickback Statute. Defendant **MARKS** then agreed with another employee to "trick" the

commission payment based on total sales (with some exclusions). During his time employed by Global and its affiliates, defendant **MARKS** received/benefitted from approximately \$433,935, which included salary and commission payments. He received these payments as direct deposit wire transfers, traveling through interstate commerce, including \$8,018.01 on February 27, 2015, and \$13,437.13 on September 25, 2015, both deposited into his Commerce National Bank account number *2625.

F. The Health Care Fraud Counts

Defendant **MARKS** also committed health care fraud as set out in Counts 2 through 13 of the Information. From in or about November 2014 until in or about at least June 2016, defendant **MARKS** knowingly and willfully executed and attempted to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, BCBSAL, Medicare, TRICARE, Prime, CVS/Caremark, and others, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by and under the custody and control of these entities, in connection with the delivery of and payment for health care benefits, items, and services. The purpose of the scheme was for defendant **MARKS** and others to unlawfully enrich themselves through the submission of false and fraudulent claims to BCBSAL, Medicare, TRICARE, Prime, CVS/Caremark, and others. The scheme and artifice is described in the section above describing the

conspiracy.

On or about the dates listed below, defendant **MARKS**, for the purpose of executing the above-described health care fraud scheme and attempting to do so, caused Global to bill for, and ship the prescription drugs, and thereby caused the following medically unnecessary and otherwise fraudulent prescriptions to be filled and shipped, to the below individuals who, aside from defendant **MARKS**, were *children* of Global employees:

Count	Drug	BCBSAL/Prime Beneficiary	Approx. Date Billed/Dispensed	Amount Billed	Amount Paid
2	Silapak	Patient B.H. (born 2013)	July 14, 2015	\$5,184.23	\$4,343.45
3	Silapak	Patient B.H. (born 2013)	August 11, 2015	\$5,184.23	\$4,343.45
4	Silapak	Patient B.H. (born 2013)	September 11, 2015	\$5,186.23	\$4,349.71
5	Silapak	Patient A.N. (born 2011)	July 14, 2015	\$5,184.23	\$4,343.45
6	Silapak	Patient A.N. (born 2011)	August 7, 2015	\$5,184.23	\$4,343.45
7	Silapak	Patient C.M. (born 2010)	July 20, 2015	\$5,184.23	\$4,403.45
8	Silapak	Patient C.M. (born 2009)	July 20, 2015	\$5,184.23	\$4,403.45
9	Silapak	Patient M.D. (born 2009)	August 18, 2015	\$5,184.23	\$4,343.45
10	Silapak	Patient M.D. (born 2009)	September 18, 2015	\$5,186.23	\$4,349.71
11	Silapak	Defendant MARKS	July 13, 2015	\$5,184	\$4,343
12	APK II	Defendant MARKS	July 27, 2015	\$2,418	\$1,992

13	Lidocin	Defendant MARKS	July 27, 2015	\$2,431	\$2,003
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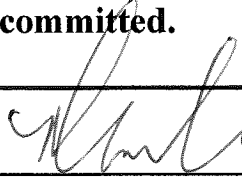
G. Loss Amounts

The parties stipulate that for purposes of calculating defendant **MARKS'** sentencing guidelines, in light of the fact that defendant **MARKS'** employment with Global began at the end of 2014 and that he took on managerial responsibilities (focused on supervising outside sales representatives) in early 2015, the attributable amount of loss to defendant **MARKS** for the above-detailed offense conduct is between \$9,500,000 and \$25,000,000. The parties further stipulate that: **(1)** this loss amount includes approximately \$4 million to Government health care programs like Medicare and TRICARE resulting in a two-level increase in his offense level under U.S.S.G. § 2B1.1(b)(7)(i); and **(2)** that defendant **MARKS** was a manager or supervisor in the scheme/conspiracy as defined under U.S.S.G. § 3B1.1(b) resulting in a three-level increase to his offense level. The parties agree that any other sentencing issues will be litigated at sentencing.

The acts described above occurred within Winston County in the Northern District of Alabama, and elsewhere. Venue is appropriate in the Northern District of Alabama.

The defendant hereby stipulates that the facts stated above are substantially correct and that the Court can use these facts in calculating the

defendant's sentence. The defendant further acknowledges that these facts do not constitute all of the evidence of each and every act that the defendant and/or any co-conspirators may have committed.



PHILLIP NATHAN MARKS

III. COOPERATION BY THE DEFENDANT

The defendant agrees to waive the Fifth Amendment privilege against self-incrimination and to provide **TRUTHFUL AND COMPLETE INFORMATION** to the government concerning all aspects of the charged crimes, including, but not limited to, the defendant's role and participation in the offenses, as well as the roles and the participation of all other persons involved in these crimes of whom the defendant has knowledge. The defendant agrees to testify against all of those individuals at any time requested by the government, including at any Grand Jury proceeding, forfeiture proceeding, bond hearing, pretrial hearing, trial, retrial, or post-trial hearing. **ALL SUCH INFORMATION AND TESTIMONY SHALL BE TRUTHFUL AND HONEST AND WITH NO KNOWING MATERIAL FALSE STATEMENTS OR OMISSIONS.** The defendant waives any witness fees to which he otherwise may be entitled if she is subpoenaed to testify against any of his co-defendants or co-conspirators.

Further, the defendant agrees to provide assistance and cooperation to the government as defined and directed by the Federal Bureau of Investigations, or any other investigative agency or body as the United States Attorney for the Northern District of Alabama may authorize, which cooperation may include the defendant's periodic submission to a polygraph examination to determine the truthfulness and accuracy of the defendant's statements and information.

IV. MOTION PURSUANT TO USSG § 5K1.1

In the event the defendant provides assistance that rises to the level of "substantial assistance," as that term is used in USSG § 5K1.1, the government agrees to file a motion requesting a downward departure in the calculation of the defendant's advisory guideline sentence. Should any of the counts of conviction subject the defendant to a mandatory minimum sentence, the government may also seek a sentence reduction below said mandatory minimum sentence, by including in its motion a recommendation pursuant to the provisions of 18 U.S.C. § 3553(e). The defendant agrees that the determination of whether defendant's conduct rises to the level of "substantial assistance" and/or whether defendant's conduct merits consideration under 18 U.S.C. § 3553(e) lies solely in the discretion of the United States Attorney's Office. Furthermore, the defendant agrees that the decision as to the degree or

extent of the downward departure requested, if any, also lies in the sole discretion of the United States Attorney's Office.

Any motion pursuant to Section 5K1.1 and/or 18 U.S.C. § 3553(e) will be filed before the defendant's sentencing hearing and will outline all material assistance which the defendant has provided. The defendant clearly understands and acknowledges that, because the defendant's plea is being offered in accordance with Rule 11(c)(1)(B), Fed.R.Crim.P., the Court will not be bound by the government's recommendation and may choose not to reduce the sentence at all.

V. RECOMMENDED SENTENCE

The United States agrees that subject to the limitations in Section X regarding subsequent conduct and pursuant to Rule 11(c)(1)(B), Fed. R. Crim. P., it will, **in the absence of "substantial assistance" by the defendant**, recommend the following disposition:

- a. That the defendant be awarded an appropriate reduction in offense level for acceptance of responsibility;
- b. That the defendant be remanded to the custody of the Bureau of Prisons and incarcerated for a term consistent with the low end of the advisory United States Sentencing Guideline range as that is determined by the court on the date that the sentence is pronounced;

- c. That following the said term of imprisonment, the defendant be placed on supervised release for a period to be determined by the court, subject to the standard conditions of supervised release as set forth in U.S.S.G § 5D1.3, and any special condition(s) ordered by the Court;
- d. That the defendant be required to pay restitution in an amount to be determined by the Court;
- e. That the defendant be required to pay a fine in accordance with the sentencing guidelines, said amount due and owing as of the date sentence is pronounced, with any outstanding balance to be paid in full by the expiration of the term of supervised release;
- f. That the defendant pay a special assessment fee of \$100 per count, said amount due and owing as of the date sentence is pronounced.

VI. WAIVER OF RIGHT TO APPEAL AND POST-CONVICTION RELIEF

In consideration of the recommended disposition of this case, I, PHILLIP NATHAN MARKS, hereby waive and give up my right to appeal my conviction and/or sentence in this case, as well as any fines, restitution, and forfeiture orders, the court might impose. Further, I waive and give up my right to argue that: (1) the statutes to which I am pleading guilty are unconstitutional and (2) the admitted conduct does not fall within the scope of those statutes. Further,

I waive and give up the right to challenge my conviction and/or sentence, any fines, restitution, forfeiture orders imposed or the manner in which my conviction and/or sentence, any fines, restitution, and forfeiture orders were determined in any post-conviction proceeding, including, but not limited to, a motion brought under 28 U.S.C. § 2255.

The defendant reserves the right to contest in an appeal or post-conviction proceeding the following:

- a. Any sentence imposed in excess of the applicable statutory maximum sentence(s);**
- b. Any sentence imposed in excess of the guideline sentencing range determined by the Court at the time sentence is imposed; and**
- c. Ineffective assistance of counsel.**

The defendant acknowledges that before giving up these rights, the defendant discussed the Federal Sentencing Guidelines and their application to the defendant's case with the defendant's attorney, who explained them to the defendant's satisfaction. The defendant further acknowledges and understands that the Government retains its right to appeal where authorized by statute.

I, PHILLIP NATHAN MARKS, hereby place my signature on the line directly below to signify that I fully understand the foregoing paragraphs, and that I am knowingly and voluntarily entering into this waiver.



PHILLIP NATHAN MARKS

VII. UNITED STATES SENTENCING GUIDELINES

Defendant's counsel has explained to the defendant, that in light of the United States Supreme Court's decision in United States v. Booker, the federal sentencing guidelines are **advisory** in nature. Sentencing is in the Court's discretion and is no longer required to be within the guideline range. The defendant agrees that, pursuant to this agreement, the Court may use facts it finds by a preponderance of the evidence to reach an advisory guideline range, and defendant explicitly waives any right to have those facts found by a jury beyond a reasonable doubt.

VIII. AGREEMENT NOT BINDING ON COURT

The defendant fully and completely understands and agrees that it is the Court's duty to impose sentence upon the defendant and that any sentence recommended by the government is **NOT BINDING UPON THE COURT**, and that the Court is not required to accept the government's recommendation. Further, the defendant understands that if the Court does not accept the government's recommendation, the defendant does not have the right to withdraw the guilty plea.

IX. VOIDING OF AGREEMENT

The defendant understands that should the defendant move the Court to accept the defendant's plea of guilty in accordance with, or pursuant to, the provisions of North Carolina v. Alford, 400 U.S. 25 (1970), or tender a plea of nolo contendere to the charges, this agreement will become NULL and VOID. In that event, the Government will not be bound by any of the terms, conditions, or recommendations, express or implied, which are contained herein.

X. SUBSEQUENT CONDUCT

The defendant understands that should the defendant violate any condition of pretrial release or violate any federal, state, or local law, or should the defendant say or do something that is inconsistent with acceptance of responsibility, the United States will no longer be bound by its obligation to make the recommendations set forth in Section V of the Agreement, but instead, may make any recommendation deemed appropriate by the United States Attorney in his sole discretion.

XI. OTHER DISTRICTS AND JURISDICTIONS

The defendant understands and agrees that this agreement **DOES NOT BIND** any other United States Attorney in any other district, or any other state or local authority.

XII. COLLECTION OF FINANCIAL OBLIGATION

In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the defendant agrees to fully disclose all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. The defendant also will promptly submit a completed financial statement to the United States Attorney's Office, in a form that it provides and as it directs. The defendant also agrees that the defendant's financial statement and disclosures will be complete, accurate, and truthful. Finally, the defendant expressly authorizes the United States Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

XIII. AGREEMENT REGARDING RELEVANT CONDUCT AND RESTITUTION

As part of the defendant's plea agreement, the defendant admits to the above facts associated with the charges and relevant conduct for any other acts. The defendant understands and agrees that the relevant conduct contained in the factual basis will be used by the Court to determine the defendant's range of punishment under the advisory sentencing guidelines. The defendant admits that all of the crimes listed in the factual basis are part of the same acts, scheme, and course of conduct.

This agreement is not meant, however, to prohibit the United States Probation Office or the Court from considering any other acts and factors which may constitute or relate to relevant conduct. Additionally, if this agreement contains any provisions providing for the dismissal of any counts, the defendant agrees to pay any appropriate restitution to each of the separate and proximate victims related to those counts should there be any.

XIV. TAX, FORFEITURE AND OTHER CIVIL/ADMINISTRATIVE PROCEEDINGS

Unless otherwise specified herein, the defendant understands and acknowledges that this agreement does not apply to or in any way limit any pending or prospective proceedings related to defendant's **tax liabilities**, if any, or to any pending or prospective **forfeiture** or other **civil** or **administrative** proceedings.

Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offenses to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration

consequences that his plea may entail, even if the consequence is his automatic removal from the United States.

FORFEITURE

The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past five years, or in which the defendant has or had during that time any financial interest. The defendant agrees to take all steps as requested by the Government to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to undergo any polygraph examination the government may choose to administer concerning such assets and to provide and/or consent to the release of the defendant's tax returns for the previous five years.

The defendant agrees to consent to the immediate entry of a final order of forfeiture against him, pursuant to Fed. R. Crim. P. 32.2(b)(1), in the amount of \$433,935, which represents proceeds the defendant personally obtained, controlled, and benefitted from as a result of the offense(s) alleged in **COUNTS 1 through 13** of the Information and to which the defendant is indicating the defendant's desire to plead guilty by way of this written Plea Agreement. For purposes of entering said order of forfeiture, the defendant acknowledges that a nexus exists between said amount and the criminal offenses to which the defendant is pleading guilty. The defendant agrees to take all steps as requested by the Government to pass clear title

to forfeitable assets to the Government, and to testify truthfully in any judicial forfeiture proceeding.

The defendant acknowledges that if, due to an act or omission of the defendant, proceeds of the defendant's offenses: (i) cannot be located upon the exercise of due diligence; (ii) have been transferred or sold to, or deposited with, a third party; (iii) have been placed beyond the jurisdiction of the court; (iv) have been substantially diminished in value; or (v) have been commingled with other property which cannot be divided without difficulty, as a result, the Government is authorized under law to seek the forfeiture of any and all assets of the defendant as substitute assets for the purpose of satisfying the final order of forfeiture until same is satisfied in full.

The defendant hereby waives the requirements of Federal Rules of Criminal Procedure 32.2 regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant also waives the requirements of Federal Rules of Criminal Procedure 43(a) with respect to the imposition of any forfeiture sanction carried out in accordance with this Plea Agreement. The defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

The defendant further waives all 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 any Double Jeopardy challenges that the defendant may have to the entry of a Forfeiture Order before sentencing, and any claims, defenses or challenges arising under the Excessive Fines Clause of the Eighth Amendment resulting from the forfeiture imposed as a result of this Information and/or any pending or completed administrative or civil forfeiture actions based upon the course of conduct that provides the factual basis for the forfeiture.

Non-Abatement of Criminal Forfeiture

The defendant agrees that the forfeiture provisions of this Plea Agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that determination shall be binding upon the defendant's heirs, successors, and assigns until the agreed forfeiture, including any agreed money judgment amount, is collected in full. To the extent that forfeiture pursuant to this agreement requires the defendant to disgorge wrongfully obtained criminal proceeds for the benefit of the defendant's victims, the defendant agrees that the forfeiture is primarily remedial in nature.

XV. DEFENDANT'S UNDERSTANDING

I have read and understand the provisions of this agreement consisting of **41 pages**. I have discussed the case and my constitutional and other rights with my lawyer. I am satisfied with my lawyer's representation in this case. I understand that by pleading guilty, I will be waiving and giving up my right to continue to plead not guilty, to a trial by jury, to the assistance of counsel at that trial, to confront, cross-examine, or compel the attendance of witnesses, to present evidence on my behalf, to maintain my privilege against self-incrimination, and to the presumption of innocence. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

NO OTHER PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO ME BY THE PROSECUTOR, OR BY ANYONE ELSE, NOR HAVE ANY THREATS BEEN MADE OR FORCE USED TO INDUCE ME TO PLEAD GUILTY.

I further state that I have not had any drugs, medication, or alcohol within the past 48 hours except as stated here:

I understand that this Plea Agreement will take effect and will be binding as to the Parties **only** after all necessary signatures have been affixed hereto.

I have personally and voluntarily placed my initials on every page of this Agreement and have signed the signature line below to indicate that I have read,

understand, and approve all of the provisions of this Agreement, both individually and as a total binding agreement.

9/12/18
DATE


PHILLIP NATHAN MARKS
Defendant

XVI. COUNSEL'S ACKNOWLEDGMENT

I have discussed this case with my client in detail and have advised my client of all of my client's rights and all possible defenses. My client has conveyed to me that my client understands this Agreement and consents to all its terms. I believe the plea and disposition set forth herein are appropriate under the facts of this case and are in accord with my best judgment. I concur in the entry of the plea on the terms and conditions set forth herein.

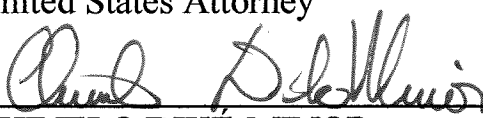
9/14/18
DATE


BRETT BLOOMSTON
Defendant's Counsel

XVII. GOVERNMENT'S ACKNOWLEDGEMENT

I have reviewed this matter and this Agreement and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

9/18/18
DATE

JAY E. TOWN
United States Attorney

CHINELE DIKE-MINOR
Assistant United States Attorney