

FILED

JUL 31 2015

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Case No. 1:15 CR 00212-AWI

16 Plaintiff,

17 MEMORANDUM OF PLEA AGREEMENT
18 PURSUANT TO RULE 11(c) OF THE
19 FEDERAL RULES OF CRIMINAL
20 PROCEDURE

21 v.
22 PAUL S. SINGH,

Defendant.

23 Pursuant to Rule 11(c) of the Federal Rules of Criminal
24 Procedure, the United States of America, by and through Benjamin
25 B. Wagner, the United States Attorney for the Eastern District of
26 California, and Assistant United States Attorneys Patrick R.
27 Delahunty and Kirk E. Sheriff, and Defendant, Paul S. Singh, and
28 his attorney, Benjamin Gluck, have agreed as follows:

29 This document contains the complete Memorandum of Plea
30 Agreement ("Plea Agreement") between the United States Attorney's
31 Office for the Eastern District of California ("Government") and
32 defendant Paul S. Singh regarding this case. This Plea Agreement
33 is limited to the United States Attorney's Office for the Eastern
34 District of California and cannot bind any other federal, state,

1 or local prosecuting, administrative, or regulatory authorities.

2 1. Charges.

3 The defendant acknowledges that he is charged in an
4 information as follows:

5 Count 1: Mail Fraud, in violation of Title 18, United States
6 Code, Section 1341.

7 And, the defendant acknowledges that the information
8 includes a criminal forfeiture allegation pursuant to Title 18,
9 United States Code, Sections 981(a)(1)(C), 982(a)(4), 982(a)(7),
10 and Title 28, United States Code, Section U.S.C. § 2461(c).

11 2. Nature, Elements and Possible Defenses.

12 The defendant has read the charges against him contained in
13 the information and has had that charge fully explained to him by
14 his attorney. Further, the defendant fully understands the
15 nature and elements of the crime in the information to which he
16 is pleading guilty, together with the possible defenses thereto,
17 and has discussed them with his attorney.

18 The elements of the crime of Mail Fraud are:

19 First, the defendant knowingly participated in,
20 devised, or intended to devise a scheme
21 or plan to defraud, or a scheme or plan
22 for obtaining money or property by means
23 of false or fraudulent pretenses,
24 representations, or promises;

25 Second, the statements made or facts omitted as
26 part of the scheme were material; that
27 is, they had a natural tendency to
28 influence, or were capable of
29 influencing, a person to part with money
30 or property;

31 Third, the defendant acted with the intent to
32 defraud, that is, the intent to deceive
33 or cheat; and

34 Fourth, the defendant used, or caused to be

used, the mails to carry out or attempt to carry out an essential part of the scheme.

3. Agreements by the Defendant.

(a) Defendant agrees that this plea agreement shall be filed with the court and become a part of the record of the case.

(b) Defendant agrees that, at or before the entry of plea proceeding, he will sign a written waiver of prosecution by indictment and will consent to proceed by information rather than indictment. Further, the defendant has reviewed the information in this case and fully understands the charge contained therein.

(c) Defendant agrees to enter a plea of guilty to Count 1 of the information, which charges him with Mail Fraud, in violation of Title 18, United States Code, Section 1341, because he is guilty of that charge.

(d) Defendant understands and agrees that he will not be allowed to withdraw his plea should the Court fail to follow the government's sentencing recommendations.

(d) Defendant knowingly and voluntarily waives his Constitutional and statutory rights to appeal his plea, conviction, restitution imposed, forfeiture order and sentence. This waiver of appeal includes, but is not limited to, an express waiver of defendant's right to appeal his plea, conviction, restitution imposed, forfeiture order and sentence on any ground, including any appeal right conferred by 18 U.S.C. § 3742, and defendant further agrees not to contest his plea, conviction, restitution imposed, forfeiture order and sentence in any post-conviction proceeding, including but not limited to a proceeding under 28 U.S.C. § 2255, except for non-waivable claims.

1 (e) Defendant further acknowledges that his plea of guilty
2 is voluntary and that no force, threats, promises or
3 representations have been made to anybody, nor agreement reached,
4 other than those set forth expressly in this agreement, to induce
5 the defendant to plead guilty.

6 (f) Defendant agrees that his base offense level for Mail
7 Fraud is seven (7) pursuant to Section 2B1.1(a)(1) of the United
8 States Sentencing Commission Guidelines Manual ("Sentencing
9 Guidelines"); plus the applicable loss guideline level under
10 § 2B1.1(b)(1) due to the actual loss of approximately \$47,000
11 caused by defendant's conduct and the defendant's knowing
12 submission of false claims seeking at least \$80,000 from health
13 care benefit programs; plus two (2) levels because the offense
14 involved 10 or more victims (§ 2B1.1(b)(2)(A)), plus two (2)
15 levels because the offense involved the conscious or reckless
16 risk of death or serious bodily injury (§ 2B1.1(b)(15)(A)); and,
17 plus two (2) levels for abuse of a position of trust and use of a
18 special skill (§ 3B1.3).

19 (g) Defendant agrees not to move for any downward
20 adjustments in his offense level under Chapters Two, Three, Four
21 and/or Five of the Sentencing Guidelines, except as specifically
22 provided below. The defendant understands and agrees that this
23 agreement by him includes, without limitation, not moving for a
24 downward departure of his offense level, criminal history
25 category or criminal history points as defined by the Sentencing
26 Guidelines, with these exceptions: (1) to the extent that the
27 2015 U.S. Sentencing Guidelines provide for a different sentence
28 than the 2014 Guidelines, the defendant reserves the right to

1 argue under Section 3553(a) that he should be sentenced
2 consistent with the 2015 Guidelines; and, (2) the defendant
3 reserves the right to argue for a downward departure of not more
4 than a total of two (2) levels under, cumulatively and combined,
5 Sentencing Guidelines Sections 5H1.3 and 5H1.6. The defendant
6 retains the right to move for a downward variance of his sentence
7 under the factors set forth in 18 U.S.C. § 3553. The defendant
8 acknowledges that, if the defendant requests or suggests in any
9 manner a different sentence than what is called for under this
10 agreement, the Government, at its sole discretion, may withdraw
11 from this Plea Agreement and continue with its prosecution of the
12 defendant as if the parties had not entered into this Plea
13 Agreement.

14 (h) Defendant understands that the Court must consult the
15 Sentencing Guidelines (as promulgated by the Sentencing
16 Commission pursuant to the Sentencing Reform Act of 1984, 18
17 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by
18 United States v. Booker and United States v. Fanfan, 543 U.S. 220
19 (2005)), and must take them into account when determining a final
20 sentence. Defendant understands that the Court will determine a
21 non-binding and advisory guideline sentencing range for this case
22 pursuant to the Sentencing Guidelines. Defendant further
23 understands that the Court will consider whether there is a basis
24 for departure from the guideline sentencing range (either above
25 or below the guideline sentencing range) because there exists an
26 aggravating or mitigating circumstance of a kind, or to a degree,
27 not adequately taken into consideration by the Sentencing
28 Commission in formulating the Guidelines. Defendant further

1 understands that the Court, after consultation and consideration
2 of the Sentencing Guidelines, must impose a sentence that is
3 reasonable in light of the factors set forth in 18 U.S.C.
4 § 3553(a).

5 (i) Defendant agrees to waive all rights under the "Hyde
6 Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), to recover
7 attorneys' fees or other litigation expenses in connection with
8 the investigation and prosecution of all charges in the above-
9 captioned matter and of any related allegations (including
10 without limitation any charges to be dismissed pursuant to this
11 Agreement and any charges previously dismissed).

12 (j) Defendant agrees the conduct to which he is pleading
13 requires mandatory restitution pursuant to Section
14 3663A(c)(1)(A)(ii) of Title 18, United States Code, and agrees to
15 pay restitution to in an amount to be determined by the court.
16 The defendant agrees that he owes restitution of not less than
17 \$47,457.

18 (k) Defendant agrees to make a full and complete disclosure
19 of defendant's assets and financial condition, and will complete
20 the United States Attorney's Office's "Authorization to Release
21 Information" and "Financial Affidavit" within five (5) weeks from
22 the entry of the defendant's change of plea. The defendant also
23 agrees to have the court enter an order to that effect. The
24 defendant understands that this plea agreement is voidable by the
25 government if the defendant fails to complete and provide the
26 described documentation to the United States Attorney's office
27 within the allotted time.

28 (l) Defendant agrees to forfeit to the United States

1 voluntarily and immediately all right, title, and interest to any
2 and all assets seized pursuant to Title 18, United States Code,
3 Sections 981(a)(1)(C), 982(a)(4), 982(a)(7), Title 28, United
4 States Code, Section U.S.C. § 2461(c), and Fed. R. Crim. P.
5 32.2(b)(1). This also includes a personal forfeiture money
6 judgment in the full amount of restitution as ordered by the
7 court. Further, the defendant agrees that such an amount is a
8 reasonable reflection of the amount that the defendant obtained
9 directly or indirectly, as the result of the underlying criminal
10 scheme and the violations of Title 18, United States Code,
11 Sections 981(a)(1)(C), 982(a)(4), 982(a)(7), and Title 28, United
12 States Code, Section U.S.C. § 2461(c). As part of the imposition
13 of the personal forfeiture money judgment, the defendant agrees
14 to provide this Office with signed waivers related to federal and
15 state income tax returns, and a waiver of the Right to Financial
16 Privacy Act, which includes, but is not limited to, any credit
17 records, communication records, DMV records, educational records,
18 employment records, military records, business records, and
19 credit reports maintained by any consumer credit reporting
20 entity, until such time as the money judgment is satisfied. In
21 this regard, the Defendant agrees to complete and sign a copy of
22 IRS Form 8821 (relating to the voluntary disclosure of federal
23 tax return information), whatever financial information
24 disclosure form which may be required by an agency, as well as
25 this Office's Right to Financial Privacy Act Waiver &
26 Authorization to Release Information form.

27 Defendant agrees to fully assist the government in the
28 forfeiture of any seized assets or assets later determined to be

1 forfeitable and to take whatever steps are necessary to pass
2 clear title to the United States. Defendant shall not sell,
3 transfer, convey, or otherwise dispose of any assets found to be
4 connected to the criminal events charged in the information.

5 Defendant agrees not to file a claim to any of the seized
6 property in any criminal proceeding or civil proceeding,
7 administrative or judicial, which is or may be initiated.

8 Defendant agrees to waive right to notice of any forfeiture
9 proceeding involving such property, and agrees to not file a
10 claim or assist others in filing a claim in such a proceeding.

11 The defendant waives the notice provisions of Fed. R. Crim.
12 P. 7(c) and 32.2(a), waives oral pronouncement of forfeiture at
13 the time of sentencing and any defects in such pronouncement that
14 pertain to forfeiture, and waives any defenses to forfeiture,
15 including any defense predicated on the Ex Post Facto, Double
16 Jeopardy, and Excessive Fines Clauses of the United States
17 Constitution. The defendant knowingly and voluntarily waives any
18 right to jury trial in any criminal or civil forfeiture
19 proceeding.

20 (m) If the defendant's conviction on the count to which he
21 is pleading is ever vacated at the defendant's request, or his
22 sentence is ever reduced at his request, the government shall
23 have the right to prosecute the defendant on the count to which
24 he pleaded guilty and file any new charges that would otherwise
25 be barred by this Plea Agreement. The decision to pursue any or
26 all of these options is solely in the discretion of the United
27 States Attorney's Office. By signing this agreement, the
28 defendant agrees to waive any objections, motions, and defenses

1 he might have to the government's decision, including Double
2 Jeopardy. In particular, he agrees not to raise any objections
3 based on the passage of time with respect to such counts
4 including, without limitation, any statutes of limitation or any
5 objections based on the Speedy Trial Act or the Speedy Trial
6 Clause of the Sixth Amendment.

7 If it is determined that the defendant has violated any
8 provision of this Plea Agreement or if the defendant successfully
9 moves to withdraw his plea: (1) all statements made by the
10 defendant to the government or other designated law enforcement
11 agents, or any testimony given by the defendant before a grand
12 jury or other tribunal, whether before or after his Plea
13 Agreement, shall be admissible in evidence in any criminal,
14 civil, or administrative proceedings hereafter brought against
15 the defendant; and (2) the defendant shall assert no claim under
16 the United States Constitution, any statute, the Federal Rules of
17 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or
18 any other federal rule, that statements made by the defendant
19 before or after this Plea Agreement, or any leads derived
20 therefrom, should be suppressed. By signing this Plea Agreement,
21 the defendant waives any and all rights in the foregoing
22 respects.

23 (n) Defendant recognizes that pleading guilty may have
24 consequences with respect to his immigration status if he is not
25 a citizen of the United States. The defendant's plea to the
26 violation herein may subject him to automatic deportation and
27 removal from the United States. See 8 U.S.C. § 1227(a)(1), et
28 seq. Defendant affirms that he has been advised of the

1 immigration consequences of pleading guilty and wants to plead
2 guilty regardless of any immigration consequences that may result
3 from his plea, even if such consequence includes his automatic
4 deportation and removal from the United States after completing
5 any sentence of incarceration due to his plea.

6 4. Agreements by the Government.

7 (a) The government agrees to recommend a two-level
8 reduction (if the offense level is less than 16) or a three-level
9 reduction (if the offense level reaches 16) in the computation of
10 the defendant's offense level if the defendant clearly
11 demonstrates acceptance of responsibility for his conduct as
12 defined in Section 3E1.1 of the Sentencing Guidelines.

13 (b) The government agrees that the defendant's base offense
14 level for Mail Fraud is seven (7) pursuant to Section 2B1.1(a)(1)
15 of the United States Sentencing Commission Guidelines Manual
16 ("Sentencing Guidelines"); plus the applicable loss guideline
17 level under § 2B1.1(b)(1) due to the actual loss of
18 approximately \$47,000 caused by defendant's conduct and the
19 defendant's knowing submission of false claims seeking at least
20 \$80,000 from health care benefit programs; plus two (2) levels
21 because the offense involved 10 or more victims
22 (§ 2B1.1(b)(2)(A)), plus two (2) levels because the offense
23 involved the conscious or reckless risk of death or serious
24 bodily injury (§ 2B1.1(b)(15)(A)); and, plus two (2) levels for
25 abuse of a position of trust and use of a special skill
26 (§ 3B1.3).

27 (c) The government agrees to recommend that the defendant
28 be sentenced at the low-end of the applicable guideline range and

1 sentenced to imprisonment for half of the defendant's guideline
2 term, with a term of supervised release which includes the
3 remainder of the guideline term served in home detention, to be
4 paid by the defendant.

5 (d) The defendant acknowledges and understands that the
6 government makes no other representations to him regarding fines,
7 whether any other specific offense characteristics apply to his
8 conduct, his criminal history or criminal history points under
9 Chapter Four, or whether additional enhancements or reductions
10 under Chapter Three or Five of the Sentencing Guidelines apply,
11 and defendant understands that the government is free to comment
12 and to make recommendations to the court and the probation office
13 regarding those matters.

14 5. Factual Basis.

15 Defendant will plead guilty because he is in fact guilty of
16 the crime set forth in Count 1 of the information. Defendant
17 also agrees that the following are the facts of this case,
18 although he acknowledges that, as to other facts, the parties may
19 disagree:

20 Beginning no later than on or about May 2008, and
21 continuing to at least on or about June 2012, within the
22 State and Eastern District of California and elsewhere,
23 defendant PAUL S. SINGH devised and intended to devise a
24 scheme and artifice to defraud health care benefit
25 programs, patients, and others, of money and property, and
26 obtained money and property from health care benefit
27 programs, patients, and others, by means of materially
28 false and fraudulent pretenses, representations, and
promises.

During the above-described time period, the defendant was
the President and Secretary of Paul S. Singh, DO, Inc.,
and as a doctor, provided obstetric and gynecological
services to women, including providing forms of birth
control.

1 One form of birth control provided to patients by
2 defendant SINGH was intrauterine devices ("IUDs"). IUDs
3 are regulated by the Food and Drug Administration ("FDA"),
4 an agency within the United States Department of Health
and Human Services. The FDA has approved only one IUD
that uses copper as its active ingredient, the ParaGard T-
380A. It was sold only by its manufacturer, and was not
available on third-party websites.

5 The insertion of a non-FDA approved copper IUD risks a
6 patient's health and safety. Defendant SINGH knew of this
7 risk, and he knew that inserting a non-FDA approved copper
IUD was prohibited by the FDA. Notwithstanding that,
8 defendant SINGH knowingly obtained non-FDA approved copper
IUDs by purchasing them on the internet and knowingly
9 inserted them in his patients. Defendant SINGH failed to
inform his patients that he had inserted a non-FDA
approved copper IUD, and none of his patients consented to
the insertion of one.

10 Multiple patients of defendant SINGH complained to him of
11 discomfort and complications they associated with the non-
12 FDA approved copper IUD that defendant SINGH inserted in
13 them. In response to some of those patients' complaints,
14 defendant SINGH attempted to re-insert a patient's non-FDA
15 approved copper IUD. Regarding one such patient,
16 defendant SINGH not only re-inserted the non-FDA approved
copper IUD after the patient complained, but ultimately
17 inserted a second non-FDA approved IUD in her after the
18 patient continued to visit and complain about discomfort
19 she associated with the first IUD inserted by SINGH.

20 Defendant SINGH billed at least 10 different health care
21 benefit programs for payment for the insertion of non-FDA
22 approved copper IUDs in his patients. In submitting such
23 claims, defendant SINGH knowingly misrepresented the type
24 of IUD he had inserted, representing that he inserted an
25 FDA-approved copper IUD when in fact he had not. The
26 health care benefit programs billed by defendant SINGH
27 would not have paid defendant SINGH's claims had they
28 known that defendant SINGH had inserted non-FDA approved
copper IUDs. SINGH's criminal offense involved more than
10 victims.

On or about the date set forth below, in the State and
Eastern District of California and elsewhere, in
furtherance of the scheme and artifice to defraud
described above, the defendant, with the intent to
defraud, caused the United States mails to be used as
follows to carry out or attempt to carry out an essential
part of the scheme:

Count 1: On or about September 22, 2010, Tri-Care sent to
Paul S. Singh DO Inc., PO Box 2240, Tehachapi, California
93581, via the United States Postal Service, check
#G0003451144 in the amount of \$783.79 as payment on a

1 fraudulent claim submitted by defendant SINGH that related to patient N.K.

At all relevant times, in carrying out these actions, the defendant acted with the intent to defraud. As a result of the defendant's conduct, the defendant made false claims of over \$83,000 to health care benefit programs, his patients, and others, and received payments of at least \$47,000 on such false claims.

6. Potential Sentence.

The following is the maximum potential sentence which defendant faces as to Count One:

- Count 1: Mail Fraud
 - (a) Imprisonment.
Maximum: Twenty (20) years.

Maximum: Two hundred fifty thousand dollars (\$250,000.00).

- (c) Both such fine and imprisonment.
 - (d) Restitution - Mandatory
 - (e) Term of Supervised Release:

Maximum: Three (3) years.

(Should the defendant violate any of the terms of his supervised release, he can be returned to prison for the period of supervised release actually imposed by the Court or two (2) years, whichever is less.)

- (f) Penalty Assessment.

Mandatory: One Hundred dollars (\$100.00).

7. Waiver of Rights.

Defendant understands that by pleading guilty he surrenders certain rights, including the following:

- (a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to be represented by an attorney at all stages of the proceedings, and would have a

1 right to a public and speedy trial. The trial could be either a
2 jury trial or a trial by a judge sitting without a jury.
3 Defendant has a right to a jury trial. However, in order that
4 the trial be conducted by the judge sitting without a jury,
5 defendant, the government and the judge all must agree that the
6 trial be conducted by the judge without a jury.

7 (b) If the trial were a jury trial, the jury would be
8 composed of twelve lay persons selected at random. Defendant and
9 his attorney would have a say in who the jurors would be by
10 removing prospective jurors for cause where actual bias or other
11 disqualification is shown, or without cause by exercising
12 peremptory challenges. The jury would have to agree unanimously
13 before it could return a verdict of either guilty or not guilty.
14 The jury would be instructed that defendant is presumed innocent
15 and that it could not convict him unless, after hearing all the
16 evidence, it was persuaded of his guilt beyond a reasonable
17 doubt.

18 (c) If the trial were held before a judge without a jury,
19 the judge would find the facts and determine, after hearing all
20 the evidence, whether or not he was persuaded of the defendant's
21 guilt beyond a reasonable doubt.

22 (d) At a trial, whether by a jury or a judge, the
23 government would be required to present its witnesses and other
24 evidence against defendant. Defendant would be able to confront
25 those government witnesses and his attorney would be able to
26 cross-examine them. In turn, defendant could present witnesses
27 and other evidence on his own behalf. If the witnesses for
28 defendant would not appear voluntarily, he could require their

1 attendance through the subpoena power of the Court. At trial,
2 the defendant would also have the right to assistance of legal
3 counsel. If he could not afford legal counsel, one would be
4 appointed for him by the court at no expense to him.

5 (e) At a trial, defendant would have a privilege against
6 self-incrimination so that he could decline to testify, and no
7 inference of guilt could be drawn from this refusal to testify.

8 Defendant understands that by pleading guilty he is waiving
9 all of the rights set forth above and defendant's attorney has
10 explained those rights to him and the consequences of his waiver
11 of those rights.

12 8. Questions by Court.

13 Defendant understands that if the court questions him under
14 oath, on the record and in the presence of counsel, about the
15 offenses to which he has pleaded guilty, his answers, if false,
16 may later be used against him in a prosecution for perjury.

17 9. Entire Agreement.

18 This plea of guilty is freely and voluntarily made and not
19 the result of force or threats or of promises apart from those
20 set forth in this plea agreement. There have been no
21 representations or promises from anyone as to what sentence this
22 Court will impose.

23 10. Court not a Party.

24 It is understood by the parties that the sentencing court is
25 neither a party to nor bound by this agreement and the sentencing
26 judge is free to impose the maximum penalties as set forth in
27 paragraph 6. Further, in making its sentencing decision, the
28 Court may take into consideration any and all facts and

1 circumstances concerning the criminal activities of defendant,
2 including activities which may not have been charged in the
3 information.

4 11. Presentence Report, ✓

5 Defendant understands that the United States Probation
6 Office is not a party to this agreement and will conduct an
7 independent investigation of defendant's activities and his
8 background. It will then prepare a presentence report which it
9 will submit to the Court as its independent sentencing
10 recommendation. In addition, the government will fully apprise
11 the Probation Office, as well as the Court, of the full and true
12 nature, scope and extent of the defendant's criminal activities,
13 including information on his background and criminal history.

14

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Dated:

BENJAMIN B. WAGNER
United States Attorney

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By:

PATRICK R. DELAHUNTY
KIRK E. SHERIFF
Assistant U.S. Attorneys

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21

Dated: 7/28/15

Paul Singh
PAUL S. SINGH
Defendant

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Dated:

BENJAMIN GLUCK
Attorney for Defendant
Paul S. Singh

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12 nature, scope and extent of the defendant's criminal activities,
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16 Dated:

BENJAMIN B. WAGNER
United States Attorney

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19 By: _____
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21 Dated:

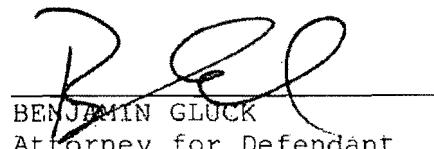
PATRICK R. DELAHUNTY
KIRK E. SHERRIFF
Assistant U.S. Attorneys

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24 Dated:

PAUL S. SINGH
Defendant

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27 Dated:

7/29/15


BENJAMIN GLUCK
Attorney for Defendant
Paul S. Singh

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Dated:

7/31/15

By:

BENJAMIN B. WAGNER
United States Attorney

PATRICK R. DELAHUNTY
KIRK E. SHERRIFF
Assistant U.S. Attorneys

Dated:

PAUL S. SINGH
Defendant

Dated:

BENJAMIN GLUCK
Attorney for Defendant
Paul S. Singh