

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2021 FEB 24 PM 2:31

CLERK



BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

STEVEN MACK,
Defendant.

Docket No. 2:21-cr-13-1

PLEA AGREEMENT

The United States of America, by and through the United States Attorney for the District of Vermont (hereafter “the United States”), and the defendant, STEVEN MACK, agree to the following in regard to the disposition of pending criminal charges.

1. STEVEN MACK agrees to waive Indictment and plead guilty to a one count Information charging him with attempting to obstruct a grand jury investigation in violation of 18 U.S.C. § 1512(c).

2. STEVEN MACK understands, agrees and has had explained to him by counsel that the Court may impose the following sentence on his plea: up to 20 years of imprisonment, pursuant to 18 U.S.C. § 1512(c); up to a three year term of supervised release; up to a \$250,000 fine; and a \$100 special assessment. STEVEN MACK further understands that the Court may order full restitution to the victims of the offense in an amount determined by the Court, pursuant to 18 U.S.C. § 3663.

3. STEVEN MACK agrees to plead guilty because he is, in fact, guilty of the above crime.

4. STEVEN MACK stipulates to, agrees with, and admits the following facts: On or about September 20, 2019, then aware that the United States Department of Justice (DOJ) was investigating STEVEN MACK’s employer’s use of an electronic medical record (EMR)

platform for possible violations of federal criminal law, as well as STEVEN MACK's role in promoting the EMR platform for an illegal use, and having been advised by his employer not to delete any records relating to that investigation, and having met previously with personnel from the United States Attorney's Office for the District of Vermont on April 3, 2019 in connection with the investigation, and knowing he was scheduled to meet with DOJ personnel within the United States Attorney's office for the District of Vermont on October 16, 2019 in relation to the investigation, STEVEN MACK intentionally deleted from his employer-issued laptop Practice Fusion documents relevant to the subject of the investigation.

5. STEVEN MACK understands that it is a condition of this agreement that he refrain from committing any further crimes, whether federal, state or local, and that if on release he will abide by all conditions of release.

6. STEVEN MACK acknowledges that he understands the nature of the charges to which he will plead guilty and the possible penalties. He also acknowledges that he has the following rights: the right to persist in a plea of not guilty; the right to a jury trial; the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceeding; the right at trial to confront and cross-examine adverse witnesses; the right to be protected from compelled self-incrimination; and the right to testify and present evidence and to compel the attendance of witnesses. He understands that by pleading guilty, he will waive these rights. He also understands that if his guilty plea is accepted by the Court, there will be no trial and the question of guilt will be resolved; all that will remain will be the Court's imposition of sentence.

7. STEVEN MACK fully understands that he may not withdraw his plea because the Court declines to follow any recommendation, motion or stipulation of the parties to this agreement,

other than the agreement between the parties pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) described in paragraph 13, below. The United States specifically reserves the right to allocute at sentencing. There shall be no limit on the information the United States may present to the Court and the Probation Office relevant to sentencing and the positions the United States may take regarding sentencing (except as specifically provided elsewhere in this agreement). The United States also reserves the right to correct any misstatement of fact made during the sentencing process, to oppose any motion to withdraw a plea of guilty, and to support on appeal any decisions of the sentencing Court whether in agreement or in conflict with recommendations and stipulations of the parties.

8. STEVEN MACK fully understands that any estimates or predictions relative to the Guidelines calculations are not binding upon the Court. He fully understands that the Guidelines are advisory and that the Court can consider any and all information that it deems relevant to the sentencing determination. He acknowledges that in the event that any estimates or predictions by his attorney (or anyone else) are erroneous, those erroneous predictions will not provide grounds for withdrawal of his plea of guilty, modification of his sentence, or for appellate or post-conviction relief.

9. Upon demand, STEVEN MACK shall furnish the United States Attorney's Office a personal financial statement and supporting documents relevant to the ability to satisfy any fine or restitution that may be imposed in this case. STEVEN MACK expressly authorizes the United States Attorney's Office to obtain a credit report on him at any time before or after sentencing in order to evaluate his ability to satisfy any financial obligation imposed by the court. If the court orders restitution and/or a fine due and payable immediately, STEVEN MACK agrees that the U.S. Attorney's Office is not precluded from pursuing any other means by which to satisfy his

full and immediately enforceable financial obligation. STEVEN MACK understands that he has a continuing obligation to pay in full as soon as possible any financial obligation imposed by the court.

10. STEVEN MACK agrees to provide the Clerk's office, at the time this plea agreement is executed, a bank cashier's check, certified check, or postal money order payable to the Clerk, United States District Court, in payment for the mandatory special assessment of \$100 for which he will be responsible when sentenced. He understands and agrees that, if he fails to pay the special assessment in full prior to sentencing, the sentencing recommendation obligations of the United States under this plea agreement will be terminated, and the United States will have the right to recommend that the Court impose any lawful sentence. Under such circumstances, he will have no right to withdraw his plea of guilty.

11. The United States agrees that in the event that STEVEN MACK fully and completely abides by all conditions of this agreement, the United States will:

- a. not prosecute him in the District of Vermont for any other criminal offenses known to the United States as of the date it signs this plea agreement, committed by him in the District of Vermont relative to his employment with Practice Fusion, Inc.;
- b. recommend that he receive a two-point credit for acceptance of responsibility under Guideline § 3E1.1(a), provided that (1) he cooperates truthfully and completely with the Probation Office during the presentence investigation, including truthfully admitting the conduct comprising the offense(s) of conviction and not falsely denying any relevant conduct for which he is accountable under U.S.S.G. § 1B1.3, (2) he abides by the conditions of his release, and (3) provided

that no new information comes to the attention of the United States relative to the issue of his receiving credit for acceptance of responsibility; and

- c. move for an additional one-point credit for timely acceptance of responsibility, if the offense level (before acceptance) is 16 or greater and he meets the conditions in the subparagraph above.

12. If the United States determines, in its sole discretion, that STEVEN MACK has committed any offense after the date of this agreement, has violated any condition of release, or has provided any intentionally false information to Probation, the obligations of the United States in this agreement will be void. The United States will have the right to recommend that the Court impose any sentence authorized by law and will have the right to prosecute him for any other offenses he may have committed in the District of Vermont. STEVEN MACK understands and agrees that, under such circumstances, he will have no right to withdraw his previously entered plea of guilty.

13. STEVEN MACK and the United States agree pursuant to Fed. R. Crim. P. 11(c)(1)(C) that the appropriate sentence shall consist of:

- a. a term of imprisonment within a range of zero to 18 months (inclusive);
- b. a fine within a range of zero to \$75,000 (inclusive); and
- c. no restitution.

Under this agreement, the Court retains discretion with all other aspects of the sentence, including the term of supervised release. The defendant further understands that if the court rejects the plea agreement on the agreed upon sentencing stipulation, the defendant will have the opportunity to withdraw the plea, and the United States may deem the plea agreement null and void.

14. It is understood and agreed by the parties that should STEVEN MACK's plea not be accepted by the Court for whatever reason, or later be withdrawn or vacated, this agreement may be voided at the option of the United States and he may be prosecuted for any and all offenses otherwise permissible. STEVEN MACK also agrees that the statute of limitations for all uncharged criminal offenses known to the United States as of the date it signs this plea agreement will be tolled for the entire period of time that elapses between the signing of this agreement and the completion of the period for timely filing a petition under 28 U.S.C. § 2255, or if such petition is filed, the date of any decision by a court to vacate the plea or the conviction.

15. It is further understood that this agreement is limited to the Office of the United States Attorney for the District of Vermont and cannot bind other federal, state or local prosecuting authorities.

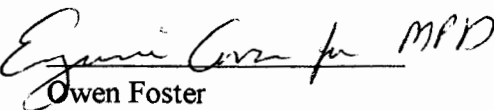
16. STEVEN MACK expressly states that he makes this agreement of his own free will, with full knowledge and understanding of the agreement and with the advice and assistance of his counsel, Stephen Huggard, Esq. and Robert Katims, Esq. STEVEN MACK further states that his plea of guilty is not the result of any threats or of any promises beyond the provisions of this agreement. Furthermore, STEVEN MACK expressly states that he is fully satisfied with the representation provided by his attorneys, Stephen Huggard, Esq. and Robert Katims, Esq., and has had full opportunity to consult with his attorney concerning this agreement, concerning the applicability and impact of the Sentencing Guidelines (including, but not limited to, the relevant conduct provisions of Guideline Section 1B1.3), and concerning the potential terms and conditions of supervised release.

17. No agreements have been made by the parties or their counsel other than those contained herein, in the letter attached hereto as Exhibit A, and any other written agreement supplementing this agreement.

UNITED STATES OF AMERICA

CHRISTINA E. NOLAN
United States Attorney

2/24/21
Date


By:  MPD
Owen Foster
Michael Drescher
Assistant U.S. Attorneys

2/18/21
Date


STEVEN MACK
Defendant

I have read, fully reviewed and explained this agreement to my client, STEVEN MACK. I believe that he understands the agreement and is entering into the agreement voluntarily and knowingly.

2/21/21
Date


Stephen Huggard
Robert Katims
Counsel for the Defendant



U.S. Department of Justice
United States Attorney
District of Vermont

United States Courthouse and Federal Building
Post Office Box 570
Burlington, Vermont, 05401-0570

(802) 951-6725
Fax: (802) 951-6540

EXHIBIT A TO
PLEA AGREEMENT

February 16, 2021

Stephen Huggard, Esq.
Robert Katims, Esq.

Re: *United States v. Steven Mack*

Dear Counsel:

The United States of America, by and through the United States Attorney for the District of Vermont (hereafter “the United States”), and the defendant agree to the following, in addition to the terms contained in the plea agreement also signed by the parties and filed in *United States v. Steven Mack* :

1. Defendant agrees that he will cooperate completely, candidly and truthfully with all federal, state and local investigators by providing any and all information in his possession relating directly or indirectly to any and all criminal activities or other matters of which he has knowledge, and that any information he provides after pleading guilty or that he previously provided, including any information previously provided pursuant to a proffer agreement, may be used against him in any subsequent proceedings, including defendant’s sentencing. Defendant will provide all federal, state and local investigators any and all documents, records, writings or tangible objects or materials of any kind in his possession or under his care, custody or control relating directly or indirectly to any criminal activity or related matter. Defendant agrees to meet with investigators and/or attorneys when requested by the United States to further this cooperation. He agrees to testify under oath completely, candidly and truthfully before any

federal grand jury within the District of Vermont or elsewhere, and in trials or other proceedings in the District of Vermont or elsewhere as requested by the United States. He understands that under this agreement his cooperation may continue even after sentencing.

2. Defendant agrees to waive his Fifth Amendment privilege against self-incrimination and his Sixth Amendment right to the assistance of counsel whenever he is required to provide information pursuant to this agreement.

3. Defendant agrees and fully understands that in the event the United States, in its sole discretion, determines that he has made any false statement to investigators or attorneys of the United States or willfully failed to disclose information; made any false statements or committed any perjury before a grand jury, before any trial court, or at any other proceeding; had any unauthorized contact with any potential defendants in this case or in cases in which he is a potential witness pursuant to this agreement; or since the date of this agreement, committed any local, state or federal offense; the United States will have the right to: (1) terminate this agreement and prosecute him for any and all offenses, including false statements and perjury, with which he could properly be charged (including reinstatement of any charges dismissed pursuant to this agreement), and (2) terminate only its obligations under this agreement while retaining his guilty plea. Defendant fully understands that should he fail to fully comply with any provision of this agreement, the United States will have the right to use the agreement itself against him at any trial, hearing or sentencing. He also understands that the Government may use any sworn or unsworn statements given by him after or before pleading guilty, including any information previously provided pursuant to a proffer agreement, and any information, materials, documents or objects provided by him pursuant to this agreement against him. Defendant waives his right to challenge the admissibility of this agreement and the information provided pursuant to this agreement into evidence under Federal Rule of Criminal Procedure 11 or any other provision of law

4. The United States agrees that in the event that Defendant fully and completely abides by all conditions of his agreements with the government, the United States will:

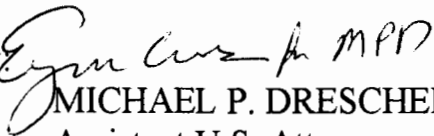
- a. make the nature, extent and value of his cooperation known to the Court;

- b. make a motion for the Court to depart from the Sentencing Guidelines pursuant to Guideline § 5K1.1 and to make motion to allow the Court to impose a sentence below any mandatory minimum term of imprisonment pursuant to 18 U.S.C. § 3553(e), if the United States, in its sole discretion, determines that his cooperation rises to the level of substantial assistance; and
- c. make whatever sentencing recommendations the United States deems appropriate.

5. This agreement supplements, but does not supersede, the terms of the agreement entered into by the parties and filed in *United States v. Steven Mack*.

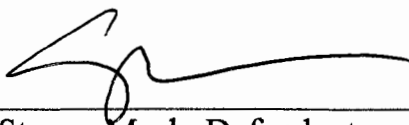
Sincerely,

CHRISTINA E. NOLAN
United States Attorney

By  MPP
MICHAEL P. DRESCHER
Assistant U.S. Attorney

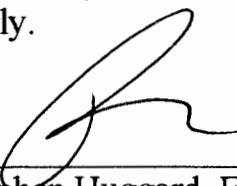
I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms.

2/18/21
Date


Steven Mack, Defendant

I have read, fully reviewed and explained this agreement to my client, Steven Mack. I believe that he understands the agreement and is entering into the agreement voluntarily and knowingly.

2/24/21
Date


Stephen Huggard, Esq.
Robert Katims, Esq.
Attorneys for Defendant