

FILED
VANESSA L. ARMSTRONG, CLERK
JUN 29 2017
U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY
PLAINTIFF

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

v.

CASE NO. 3:17CR-0064-JHM

TODD GRIFFIN

DEFENDANT

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States of America, by John E. Kuhn, Jr., United States Attorney for the Western District of Kentucky, and defendant, **TODD GRIFFIN**, and his attorneys, Brian Steel, Anthony Morgese, and R. Kent Westberry, have agreed upon the following:

1. Defendant agrees to waive Indictment by the grand jury and to plead guilty to a felony Information which will be filed against defendant by the United States Attorney for the Western District of Kentucky. That information will charge defendant with violations of (Count 1) Title 18, United States Code, Sections 1341 (Mail Fraud) and (Count 2) 1957 (Money Laundering).

2. Defendant has read the charges against him contained in the Information, and those charges have been fully explained to him by his attorney. Defendant fully understands the nature and elements of the crimes with which he has been charged.

3. Defendant will enter a voluntary plea of guilty to Counts 1 and 2 in this case. Defendant will plead guilty because he is in fact guilty of the charges. The parties agree to the following factual basis for this plea:

Defendant Todd Griffin worked as a tax credit consultant for a company located in Atlanta, Georgia. Defendant Griffin executed a scheme to defraud the Kentucky Department of Revenue (KDOR) and his client, Signature Healthcare (SHC), of money by submitting fraudulent claims for state tax credits on behalf of SHC. In furtherance of the scheme, Griffin created a fraudulent credit authorization form to make the credits appear that they had been approved by KDOR authorities, when in truth and in fact, the credits were not authorized to be paid to SHC. Griffin had fraudulently misled SHC that they were entitled to the credits when he knew they were not entitled to the credits. Griffin fraudulently obtained \$499,320 in state tax credits for SHC from KDOR. In return for securing the credits for SHC, SHC compensated Griffin with commissions totaling \$46,155. In furtherance of the scheme, Griffin caused the following mailings originating from the Western District of Kentucky:

- 1) On or around April 18, 2013, Signature Healthcare mailed a commission check of \$62,080.48 to the company Griffin worked for, consisting of \$41,850 in commissions paid to Griffin for fraudulent 2012 state credits.
- 2) On or around November 8, 2013, Signature Healthcare mailed a commission check of \$17,850 to the company Griffin work for, consisting of \$17,850 in commissions paid to Griffin for fraudulent 2013 state credits.
- 3) On or around August 27, 2013, Signature Healthcare mailed 2012 Forms 765-Kentucky Partnership Income Tax Returns containing \$358,530 in fraudulent state tax credits for the following related entities: Las Palmas SNF, LLC; LPSNF, LLC; LPSNF II, LLC; and Signature Holdings II, LLC.
- 4) On or around June 2, 2014, Signature Healthcare mailed 2013 Forms 765-Kentucky Partnership Income Tax Returns containing \$140,790 fraudulent state tax credits for the following related entities: Las Palmas SNF, LLC; LPSNF, LLC; LPSNF II, LLC; and Signature Holdings II, LLC.

Griffin obtained the tax credit payments as follows:

2012	\$358,530
2013	<u>\$140,790</u>
Total	\$499,320

Griffin paid a portion of the credits back to the state prior to SHC receiving notice that the state tax credits were fraudulent. Griffin received notice from the state that some credits were disallowed because he had power of attorney for SHC. He did this in an attempt to prevent SHC from discovering his fraud. After SHC had paid commissions to Griffin, SHC was paid the disallowed tax credits back to KDOR.

Defendant Griffin knowingly conducted and attempted to conduct the following financial transactions greater than \$10,000, affecting interstate and foreign commerce, to wit, payments to KDOR to conceal his fraud from SHC and continue to receive their commission and business, knowing that the money was the proceeds of a specified unlawful activity, that is Mail Fraud in Count 1, and while conducting and attempting to conduct such financial transaction knew the property involved in the financial transaction represented the proceeds of some form of unlawful activity. Specifically, On October 20, 2014, Griffin made the following payments to KDOR from his employer's bank account, using funds derived from the scheme, in an attempt to conceal the fraud from SHC:

•	\$30,576.85
•	\$53,853.84
•	\$76,482.00
•	<u>\$81,847.23</u>
Total	\$242,939.92

The payments were in and affecting interstate commerce in that Griffin conducted wire transfers from SunTrust Bank located in Nashville, Tennessee to the Kentucky Department of Revenue.

The parties agree to the following calculations of loss and restitution:

Total Fraudulent State Credits:	\$499,320
Total Commissions Paid by SHC:	<u>\$46,155</u>
Total Fraud Loss	\$545,475

Restitution: \$46,155 to SHC

4. Defendant understands that the charges to which he will plead guilty carries a combined maximum term of imprisonment of 40 years, a combined maximum fine of \$750,000, and a 3 year term of supervised release. Defendant understands that an additional term of imprisonment may be ordered if the terms of the supervised release are violated, as explained in 18 U.S.C. § 3583.

5. Defendant understands that if a term of imprisonment of more than one year is imposed, the Sentencing Guidelines require a term of supervised release and that he will then be subject to certain conditions of release. §§5D1.1, 5D1.2, 5D1.3.

6. Defendant understands that by pleading guilty, he surrenders certain rights set forth below. Defendant's attorney has explained those rights to him and the consequences of his waiver of those rights, including the following:

A. If defendant persists in a plea of not guilty to the charges against him, he has the right to a public and speedy trial. The trial could either be a jury trial or a trial by the judge sitting without a jury. If there is a jury trial, the jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

B. At a trial, whether by a jury or a judge, the United States would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be

able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

C. At a trial, defendant would have a privilege against self-incrimination and he could decline to testify, without any inference of guilt being drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

7. Defendant understands that the United States Attorney's Office has an obligation to fully apprise the District Court and the United States Probation Office of all facts pertinent to the sentencing process, and to respond to all legal or factual inquiries that might arise either before, during, or after sentencing. Defendant admits all acts and essential elements of the indictment counts to which he pleads guilty.

8. Defendant agrees that the amount of restitution ordered by the Court shall include Defendant's total offense conduct, and is not limited to the counts of conviction. The parties agree and stipulate that Defendant shall pay restitution in the amount of \$46,155. The parties agree that the restitution shall be ordered due and payable within 7 days after the entry of the agreed order of restitution by the Court. Defendant agrees that any payment schedule imposed by the Court is without prejudice to the United States to take all actions available to it to collect the full amount of the restitution at any time. Restitution payments shall be made payable to the U.S. District Court Clerk at Gene Snyder Courthouse, 601 W. Broadway, Louisville, KY 40202. The restitution shall be paid to or on behalf of the following victim(s):

Victim	Amount
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1) Signature Healthcare \$46,155
12201 Bluegrass Parkway
Louisville, KY 40299

Defendant agrees to pay restitution within 7 days after the filing of the agreed order of restitution by the Court. If the defendant does pay restitution above in full within seven days, the defendant shall not be required to undergo the financial provisions discussed in the remainder of this requirements contained within the remaining three paragraphs of Section 8 of the plea agreement. If the defendant does not pay full restitution within 7 days, he shall be subject to the following three paragraphs of Section 8 of this plea agreement:

Defendant agrees that not later than 45 days from entry of the Plea Agreement, Defendant shall provide to the United States, under penalty of perjury, a financial disclosure form listing all Defendant's assets/financial interests. Defendant authorizes the United States to run credit bureau reports prior to sentencing, and Defendant will sign releases authorizing the United States to obtain Defendant's financial records. Defendant understands that these assets and financial interests include all assets and financial interests in which Defendant has an interest, direct or indirect, whether held in Defendant's own name or in the name of another, in any property, real or personal. Defendant shall also identify all assets valued at more than \$5,000 which have been transferred to third parties since the date of the first offense, including the location of the assets and the identity of the third party(ies). Defendant agrees that the United States may share the contents of the reports and financial disclosures with the Court and U.S. Probation.

Defendant agrees to submit to a deposition in aid of collection at times and places that the United States directs. If the Defendant has a financial advisor or accountant, Defendant agrees, at his expense, to make them available to aid the United States in determining Defendant's net worth. Defendant authorizes the United States to file notice of Lis Pendens prior to judgment on

any real property Defendant owns either individually or jointly. Defendant agrees to his name and debt being added to the Treasury Offset Program.

Upon execution of the Plea Agreement, Defendant agrees not to transfer, sell, or secrete any of Defendant's property, real or personal, held jointly, individually or by nominee/third party, valued at \$5,000 or more without first advising the United States not less than 10 days before the proposed sale or transfer. Defendant agrees that failure to comply with any of the provisions of this Agreement constitutes a material breach of the Plea Agreement and Defendant agrees that the United States is relieved of its obligations under this Agreement and/or may not move the Court pursuant to U.S.S.G. § 3E1.1(b) to reduce the offense level by one additional level, and may in its discretion argue to the Court that the Defendant should not receive a two-level reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a). However, the Defendant may not withdraw his guilty plea because of his breach. The defendant further understands that he may be responsible for a fine, costs of prosecution, costs of incarceration and supervision which may be required.

10. Defendant acknowledges liability for the special assessment mandated by 18 U.S.C. § 3013 and will pay the assessment in the amount of \$200 to the United States District Court Clerk's Office by the date of sentencing.

11. At the time of sentencing, the United States will

- recommend a sentence of imprisonment at the lowest end of the applicable Guideline Range, but not less than any mandatory minimum term of imprisonment required by law.

- recommend a fine at the lowest end of the applicable Guideline Range, to be due and payable on the date of sentencing.

- recommend a reduction of 3 levels below the otherwise applicable Guideline for "acceptance of responsibility" as provided by §3E1.1(a) [and (b)], provided the defendant does not engage in

future conduct which violates any federal or state law, violates a condition of bond, constitutes obstruction of justice, or otherwise demonstrates a lack of acceptance of responsibility. Should such conduct occur and the United States, therefore, opposes the reduction for acceptance, this plea agreement remains binding and the defendant will not be allowed to withdraw his plea.

-stipulate that amount of loss involved in this case is \$545,475.

-agree not to pursue aggravated identity theft charges, or Title 26 charges for any federal credits for SHC for 2012 through 2014.

-Defendant agrees to pay full restitution by the date of sentencing.

12. Both parties have independently reviewed the Sentencing Guidelines applicable in this case, and in their best judgment and belief, conclude as follows:

A. The Applicable Offense Level should be determined as follows:

2B1.1(a)(1)(B)	7
2B1.1(b)(1)(G)	12
2S1.1(a)(1) (Cross reference 2B1.1)	19
2S1.1(b)(1) (1957)	1
	21
3E1.1 Acceptance of Responsibility	<u>-3</u>
Offense Level	17

Criminal History II and Offense Level 17 (27-33 months)

B. The Criminal History of defendant shall be determined upon completion of the presentence investigation, pursuant to Fed. R. Crim. P. 32(c). Both parties reserve the right to object to the USSG §4A1.1 calculation of defendant's criminal history. The parties agree to not seek a departure from the Criminal History Category pursuant to §4A1.3.

C. The foregoing statements of applicability of sections of the Sentencing Guidelines and the statement of facts are not binding upon the Court. The defendant understands the Court will independently calculate the Guidelines at

sentencing and defendant may not withdraw the plea of guilty solely because the Court does not agree with either the statement of facts or Sentencing Guideline application.

13. Defendant is aware of his right to appeal his conviction and that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Unless based on claims of ineffective assistance of counsel or prosecutorial misconduct, the Defendant knowingly and voluntarily waives the right (a) to directly appeal his conviction and the resulting sentence pursuant to Fed. R. App. P. 4(b) and 18 U.S.C. § 3742, and (b) to contest or collaterally attack his conviction and the resulting sentence under 28 U.S.C. § 2255 or otherwise.

14. Defendant agrees not to pursue or initiate any civil claims or suits against the United States of America, its agencies or employees, whether or not presently known to defendant, arising out of the investigation or prosecution of the offenses covered by this Agreement.

15. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

16. Defendant agrees to interpose no objection to the United States transferring evidence or providing information concerning defendant and this offense, to other state and federal agencies or other organizations, including, but not limited to the Internal Revenue Service, other law enforcement agencies, and any licensing and regulatory bodies, or to the entry of an order under Fed. R. Crim. P. 6(e) authorizing transfer to the Examination Division of the Internal Revenue Service of defendant's documents, or documents of third persons, in possession of the

Grand Jury, the United States Attorney, or the Criminal Investigation Division of the Internal Revenue Service. Defendant further agrees to the entry of an order under Fed. R. Crim. P. 6(e) authorizing the use of documents in possession of the Grand Jury to be used during the defendant's deposition as contemplated in paragraph 9 of this Agreement.

17. It is understood that pursuant to Fed. R. Crim. P. 11(c)(1)(B), the recommendations of the United States are not binding on the Court. In other words, the Court is not bound by the sentencing recommendation and defendant will have no right to withdraw his guilty plea if the Court decides not to accept the sentencing recommendation set forth in this Agreement.

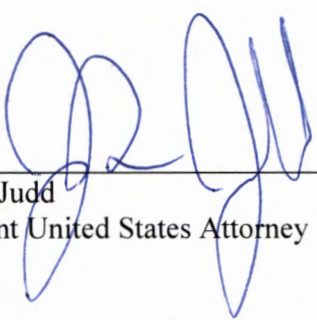
18. Defendant agrees that the disposition provided for within this Agreement is fair, taking into account all aggravating and mitigating factors. Defendant states that he has informed the United States Attorney's Office and the Probation Officer, either directly or through his attorney, of all mitigating factors. The defendant may argue for a departure or variance.

19. This document and the supplemental plea agreement state the complete and only Plea Agreements between the United States Attorney for the Western District of Kentucky and defendant in this case, and are binding only on the parties to this Agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in writing that are signed by all parties or on the record in Court. No other promises or inducements have been or will be made to defendant in connection with this case, nor have any predictions or threats been made in connection with this plea.

AGREED:

JOHN E. KUHN, JR.
United States Attorney

By:




Joshua Judd
Assistant United States Attorney

6/29/17

Date

I have read this Agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it.

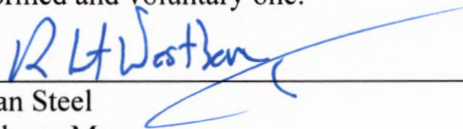


Todd Griffin
Defendant

6-29-17

Date

I am the defendant's counsel. I have carefully reviewed every part of this Agreement with the defendant. To my knowledge my client's decision to enter into this Agreement is an informed and voluntary one.



Brian Steel
Anthony Morgese
R. Kent Westberry
Counsel for Defendant

6-29-17

Date

JEK:JDJ