

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
(FORT MYERS DIVISION)

CASE NO. 20-CR-0115- VMC-KCD

UNITED STATES OF AMERICA,

vs.

FILED UNDER SEAL

WILLIAM N. HARWIN.
_____ /

SEALED NOTICE OF FILING

Pursuant to the Court's Sealed Order of January 11, 2023 (Doc. 311), we respectfully "file the attached finalized plea agreement on the docket under seal" and request that the Court grant the Sealed Unopposed Motion to Accept Plea Agreement (Doc. 310).

Date: January 12, 2022

Respectfully submitted,

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 2:20-cr-00115-VMC-KCD

15 U.S.C. § 1

WILLIAM N. HARWIN

PLEA AGREEMENT

The United States of America and William N. Harwin (“the defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

RIGHTS OF THE DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by indictment;
 - (c) to plead not guilty to any criminal charge brought against him;
 - (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to

subpoena witnesses in his defense at trial;

- (f) not to be compelled to incriminate himself;
- (g) to appeal his conviction, if he is found guilty; and
- (h) to appeal the imposition of sentence against him.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives:

- (a) the rights set out in subparagraphs 1(c)-(f) above;
- (b) the right to file any appeal or collateral attack, including but not

limited to an application or motion under 28 U.S.C. § 2241 or 2255, that challenges his conviction, including but not limited to any appeal or collateral attack raising an argument that (1) the statute to which he is pleading guilty is unconstitutional or (2) the admitted conduct does not fall within the scope of such statute; and

- (c) the right to file any appeal or collateral attack, including but not limited to an appeal under 18 U.S.C. § 3742 or an application or motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the Recommended Sentence in Paragraph 9 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)-(c).

Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Consistent with Fed. R. Crim. P. 11(b)(1)(O), the defendant recognizes that if he is not a citizen of the United States pleading guilty may have consequences with respect to his immigration status, including removal from the United States, denial of citizenship, and denial of admission to the United States in the future. The defendant will plead guilty to the charge described in paragraphs 14-17 of the one-count Indictment filed in this case on September 23, 2020, in the United States District Court for the Middle District of Florida, Case No. 2:20-CR-115, ECF No. 1.

3. The defendant admits that during the period between 1999 and September 2016, he knowingly entered into a mutual understanding with Dr. Daniel Dosoretz that Florida Cancer Specialists and Research Institute, LLC would provide medical oncology but not provide radiation oncology and that 21st Century Oncology, Inc. would provide radiation oncology but not provide medical oncology in Lee, Collier, and Charlotte Counties. The defendant admits that such activities were within the flow of, and substantially affected, interstate trade and commerce. The defendant acknowledges that this understanding violated the Sherman Antitrust Act, 15 U.S.C. § 1. The admissions in this paragraph shall be known hereinafter as the “Factual Basis.”

4. The defendant will plead guilty to the criminal charge described in Paragraph 2 above pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11. The defendant's admission of guilt relates only to the elements of the charge in count one of the Indictment.

ELEMENTS OF THE OFFENSE

5. The elements of the charged offense are that:
- (a) the conspiracy existed at or about the time alleged;
 - (b) the defendant knowingly became a member of the conspiracy;
- and
- (c) the conspiracy either substantially affected interstate commerce in goods or services or occurred within the flow of interstate commerce in goods and services.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

- (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);
- (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and

(c) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to two (2) years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2)).

7. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed. The parties agree there is no *ex post facto* issue under the August 1, 2021 Guidelines Manual. The Court must also consider the other factors set forth in 18

U.S.C. § 3553(a) in determining and imposing sentence. The defendant understands that the Court will make Guidelines determinations by applying a standard of preponderance of the evidence. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree to recommend a sentence of non-custodial probation that does not include as conditions remaining in the custody of the Bureau of Prisons for any period of time (18 U.S.C. § 3563(b)(10)), residing at a community corrections facility (18 U.S.C. § 3563(b)(11)), or remaining at his residence (18 U.S.C. § 3563(b)(19)), and a criminal fine, payable in full before the fifteenth (15th) day after the date of judgment. The United States and the defendant further agree that the amount of the fine and the length, terms, and conditions of probation (other than custodial conditions) including any community service conditions will be determined by the Court. The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed. The provisions of this Paragraph in their entirety will be referred to as “the Recommended Sentence.”

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the Recommended Sentence provided for in Paragraph 9 of this Plea Agreement.

(a) If, other than pursuant to subparagraph 10(b) below, the defendant withdraws his guilty plea before the Plea Agreement is accepted by the Court, the defendant, in any prosecutions brought against him, waives all claims under the United States Constitution, the United States Sentencing Guidelines, any statute, Rule 410 of the Federal Rules of Evidence, Fed. R. Crim. P. 11(f), or any other federal rule that the Plea Agreement (including the “Factual Basis” set forth in Paragraph 3), the guilty plea, any statement made by the defendant in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement, or any leads derived from such material, should be suppressed or are otherwise inadmissible in any proceeding, including a trial or hearing on or related to the offense that the defendant admits to committing in this Plea Agreement. The defendant understands that the aforementioned waiver of claims pursuant to this subparagraph is effective immediately upon his signing of this Plea Agreement.

(b) If the Court rejects the Recommended Sentence provided for in Paragraph 9 of this Plea Agreement, notwithstanding the provisions of subparagraph 10(a), the United States and the defendant agree that the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5)

and (d)(2)(A)) and void this Plea Agreement. Any waiver of claims under subparagraph 10(a) is rendered void if the Court rejects the Recommended Sentence provided for in Paragraph 9 and the Plea Agreement is rendered void.

11. The United States and the defendant request that the Court waive the presentence report and conduct the change of plea hearing and sentencing no earlier than May 31, 2023. The parties jointly request that the Court order the immediate return of the defendant's passport upon acceptance of the plea and imposition of the sentence. The United States and the defendant further request that the criminal fine be \$50,000, that the length of probation be six months, and that the conditions of probation include 50 hours of community service. If the Court rejects one or more of the requests in this paragraph, the United States and the defendant agree that the defendant is not free to withdraw his guilty plea and the plea agreement is not void or voidable.

GOVERNMENT'S AGREEMENT

12. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the Recommended Sentence provided for in Paragraph 9 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the defendant for any act or offense committed before the date of signature of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the provision of oncology treatments in Southwest Florida ("Relevant Offense"), including offenses under 15 U.S.C. § 2.

13. The defendant understands that he may be subject to suspension or debarment action by state or federal agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls what action, if any, other agencies may take. The defendant nevertheless affirms that he wants to plead guilty regardless of any suspension or debarment consequences of his plea.

REPRESENTATION BY COUNSEL

14. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

15. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations or requests contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

16. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, email, or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant will be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement.

“Federal Proceeding” is collectively defined as this case, the current federal investigation of violations of federal antitrust and related criminal laws involving the provision of oncology treatments in Southwest Florida, any federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party. Federal Proceeding includes, but is not limited to, an investigation, prosecution, litigation, or other proceeding regarding obstruction of, the making of a false statement or declaration in, the commission of perjury or subornation of perjury in, the commission of contempt in, or conspiracy to commit such offenses in, a Federal Proceeding. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense

will be tolled for the period between the date of signature of this Plea Agreement and six months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

17. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement because of the defendant's violation of this Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

18. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

19. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

1/11/23

DATED: _____



BY: _____

William N. Harwin
The Defendant



BY: _____

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(specially admitted)
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