

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA)
)
 v.) Cause No. 2:18 CR 105
)
 RICO PRUNTY,)
 Defendant.)
 _____)

PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, come now the United States of America, by Assistant United States Attorney Toi Denise Houston, the defendant, Rico Prunty, and his attorney, Sheldon B. Nagelberg, and show the Court they have entered into a plea agreement as follows:

1. I, Rico Prunty, am able to read, write and speak the English language.
2. I have received a copy of the Indictment and have read and discussed it with my lawyer, and believe and feel that I understand every accusation made against me in this case.
3. I have told my lawyer the facts and surrounding circumstances as known to me concerning the matters mentioned in the Indictment and believe and feel that my lawyer is fully informed as to all such matters. My lawyer

has counseled and advised me as to the nature and elements of every accusation against me and as to any possible defenses, I might have.

4. I understand that I am entitled to have all of my rights which may be involved in this matter explained to me, and that I have the right to have any questions I may have answered for me.

5. I understand by pleading guilty I waive certain rights. The rights described below have been explained to me, as well as the consequences of my waiver of these rights:

- a. If I persisted in a plea of not guilty to the charges against me, I would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. I have the right to a jury trial. However, I may waive a jury trial in writing with the approval of the Court and the consent of the government.
- b. If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. My attorney and I would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. 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 a defendant is presumed innocent, and that it could not convict unless, after hearing all the evidence, it was persuaded of my guilt beyond a reasonable doubt, and that it was to consider each accusation against me separately.
- c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each charge separately, whether or not the judge was persuaded of my guilt beyond a reasonable doubt.
- d. At a trial whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against me. I

would be able to confront those government witnesses and my attorney would be able to cross-examine them. In turn, I could present witnesses and other evidence in my own behalf. If the witnesses for me would not appear voluntarily, I could require their attendance through the subpoena power of the Court.

- e. At a trial, I would have a privilege against self-incrimination so that I could decline to testify, and no inference of guilt could be drawn from my refusal to testify. If I desired to do so, I could testify on my own behalf.
- f. At trial and at every stage of the proceedings, I have a right to an attorney, and if I could not afford an attorney, one would be appointed for me.
- g. In the event that I should be found guilty of the charges against me, I would have the right to appeal my conviction on such charges to a higher court.

6. I understand that under the U.S. Sentencing Guidelines, the Court, in light of an investigation by the United States Probation Office, will determine the applicable sentencing guideline range, and that the Court will determine all matters, whether factual or legal, relevant to the application of the U.S. Sentencing Guidelines. I understand that the U.S. Sentencing Guidelines are advisory only, and that the specific sentence to be imposed upon me will be determined by the judge after a consideration of a pre-sentence investigation report, input from my lawyer and the government, federal sentencing statutes, and the U.S. Sentencing Guidelines.

7. Notwithstanding the above, I have, with the assistance of counsel, entered into an agreement with the United States Attorney's Office as follows:

- a. I will plead guilty to Counts 6 and 9 of the Indictment charging me with Aggravated Identity Theft and Knowing Disclosure of Another Person’s Individually Identifiable Health Information with Intent to Sell, Transfer, or Use for Personal Gain, in violation of 18 U.S.C. §1028A and 42 U.S.C. §1320d-6(a) and (b)(3), respectively, because I am in fact guilty of these offenses.
- b. I understand the maximum possible penalties that may be imposed upon me are as follows:

<u>Count</u>	<u>Prison</u>	<u>Supervised Release</u>	<u>Fine</u>
6	2 years Mandatory Consecutive	1 year	\$250,000
9	10 years	3 years	\$250,000

- c. I further understand that a special assessment of \$100 will be imposed on *each count* of conviction in addition to any other penalty imposed, and this special assessment is due and payable prior to my sentencing hearing. The total special assessment is \$200.00.
- d. I further understand that under a term of supervised release, I would have to live my life under certain conditions set by the Court and should I violate any of those conditions, the Court could revoke the supervised release and sentence me to serve an additional term of imprisonment.
- e. The United States Attorney and I have entered into the following agreements pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure that are not binding upon the Court. I understand that if the Court does not follow these agreements I will not be allowed to withdraw my guilty plea:
 - i. At the time of the sentencing, the United States Attorney shall recommend that I be sentenced to a period of incarceration at the low end of the applicable guideline range, said guideline range to be determined by the Court.
 - ii. The United States Attorney and I agree that in recognition of my acceptance of responsibility for my offense conduct, I am

entitled to a two-level reduction in offense level pursuant to U.S.S.G. § 3E1.1(a). Further, we agree that I have assisted authorities in the investigation or prosecution of my own misconduct by timely notifying the United States Attorney's Office of my intention to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. The parties agree that if my offense level is 16 or greater, the United States Attorney will move, at sentencing, for me to receive an additional one-level reduction in offense level pursuant to U.S.S.G. §3E1.1(b). I further agree that the United States Attorney's obligation to recommend acceptance of responsibility under this plea agreement is contingent upon my continuing manifestation of acceptance of responsibility. If I deny my involvement, give conflicting statements of my involvement, or engage in additional criminal conduct including any personal use of controlled substances, the government shall not be bound to recommend any reduction in offense level for acceptance of responsibility. I further understand that the Court is not bound by this recommendation and that the Court makes the final decision regarding my receipt of a reduction in offense level for acceptance of responsibility.

- f. The United States Attorney and I have entered into these agreements regarding these matters based upon the knowledge presently available to us; I understand that if new information comes to the government's attention that bears upon these facts, the government is obligated by the sentencing guidelines to provide that information to the Court; and the government's compliance with this obligation shall not be deemed to be in violation of this plea agreement.
- g. After I have been sentenced, the United States Attorney will move this Court to dismiss all remaining counts against me in the Indictment. Even though these counts will be dismissed, I fully understand that I will still be held accountable for any losses alleged in these counts and for any restitution due and owing the victims of my criminal offenses.

- h. As part of this plea agreement, I agree to make full restitution to the victims of the offenses in an amount to be determined by the Court. I acknowledge restitution shall be due immediately and paid pursuant to a schedule to be set by the Court at sentencing. I understand that a payment schedule imposed by the Court establishes only a minimum obligation, and does not preclude the United States Attorney's Office from pursuing any other means to collect the restitution judgment pursuant to federal and state law. I also agree to make restitution to all of the victims of the conspiracy, including victims in counts that are being dismissed. Although I am free to argue the amount of restitution, I agree and do not dispute that restitution shall be paid to all of the victims associated with my criminal conduct as charged in the Indictment including counts that will be dismissed.
- i. I expressly authorize the U.S. Attorney's Office to immediately obtain a credit report in order to evaluate my ability to satisfy any financial obligation imposed by the Court. I agree to submit within 30 days of the filing of this plea agreement a completed financial statement to the U.S. Attorney's Office in a form it provides and as it directs. I promise that the financial statement and disclosures will be complete, accurate and truthful, and I understand that any willful falsehood on the financial statement will be a separate crime and may be punished under 18 U.S.C. § 1001 by an additional five years' incarceration and fine. If deemed necessary by the U.S. Attorney's Office, I agree to submit, prior to sentencing, to an examination under oath on the issue of my ability to pay restitution.
- j. I understand that the law gives a convicted person the right to appeal the conviction and the sentence imposed. I also understand that no one can predict the precise sentence that will be imposed, and that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for my offenses as set forth in this plea agreement. With this understanding and in consideration of the government's entry into this plea agreement, I expressly waive my right to appeal or to contest my conviction and all components of my sentence or the manner in which my conviction or my sentence was determined or imposed, to any Court on any ground other than a claim of ineffective assistance of counsel, including any appeal under Title 18, United States Code, Section 3742 or any post-conviction

proceeding, including but not limited to, a proceeding under Title 28, United States Code, Section 2255. I also agree to waive all rights, whether asserted directly or through a representative, to, after sentencing, request or receive from the United States any further records, reports, or documents pertaining to the investigation or prosecution of this matter; this waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy Act of 1974.

k. I understand that the United States Attorney has reserved the right to tell the Court the good things about me and the bad things about me, and to fully inform the Court of the nature and extent of my offense as well as the full extent of my criminal history.

8. I am prepared to state to the Court the facts in this matter that cause me to believe I am guilty as charged in Counts 6 and 9 of the Indictment. I acknowledge that the following is only a summary of the relevant facts:

I was an employee at a Medical Facility located in Arizona. I accessed the medical intake forms, ~~copied the portions~~ that contained the personal individually identifiable health information (PHI) and personal identifying information (PII) of more than 300 individuals who were or had been patients at the Medical Facility. I forwarded the medical intake forms from Arizona to co-conspirators in Northwest Indiana without the knowledge, authority, or permission of the patients or the Medical Facility. I acknowledge that the PII and PHI was fraudulently being used to open financial accounts in the names of these individuals without their knowledge, authority, or permission.

Count 6 – Aggravated Identity Theft:

On or about March 14, 2016, I, without lawful authority, knowingly aided and abetted in the transfer, possession and use of the date of birth and social security number of VM which resulted in the issuance of Capital One credit card accounts ending in 7782 and 9429. I transferred VM's personal identifiable information (PII) and personal health identifiable information (PHI) from a Medical Facility located in Arizona to Indiana without the knowledge, authority, or permission of VM.

Count 9 – Knowing Disclosure of Another Person’s Individually Identifiable Health Information with Intent to Sell, Transfer, or Use Same for Personal Gain HIPAA Violation):

Between in or about July 2014 and continuing through in or about May 2017, I knowingly obtained and disclosed to my co-conspirators the individually identifiable health information (PHI) relating to numerous individuals who were patients at a Medical Facility located in Arizona. I did this knowing that the intent was to use the PHI of the patients for the personal gain and malicious harm to the patients in that I knowingly disclosed the names, dates of birth, social security numbers, and addresses of these patients without their knowledge, authority, or permission. I did this knowing that the disclosure of the PHI of these individuals was used to fraudulently open financial accounts in the names of the individuals who were or had been patients at the Medical Facility. I knowingly disclosed the social security numbers of these individuals who were patients at the Medical Facility located in Arizona without any permissible reason under the law.

9. I understand that if I violate any of the provisions of this plea agreement, including my continuing obligation to demonstrate acceptance of responsibility, the United States may at its option either (a) ask the Court to make a determination that I have breached a term in this agreement in which event I will at sentencing lose the benefit of all the non-binding promises made by the government in this agreement and I would have no right to withdraw my guilty plea, or (b) the United States could seek to have the Court declare this entire plea agreement null and void, in which event I can then be prosecuted for all criminal offenses that I may have committed.

10. I believe and feel that my lawyer has done all that anyone could do to counsel and assist me, and that I now understand the proceedings in this case against me.

11. I declare that I offer my plea of guilty freely and voluntarily and of my own accord, and no promises have been made to me other than those contained in this agreement, nor have I been threatened in any way by anyone to cause me to plead guilty in accordance with this agreement.

12. I understand and acknowledge that this agreement, once filed with the court, is a public document and available for public viewing.

/s/Rico Prunty
Rico Prunty
Defendant

/s/ Sherldon B. Nagelberg
Sheldon B. Nagelberg
Attorney for Defendant

THOMAS L. KIRSCH II
UNITED STATES ATTORNEY

By: /s/ Toi Denise Houston
Toi Denise Houston
Assistant United States Attorney