

Eastern District of Kentucky

**FILED**

MAR 24 2017

AT LEXINGTON  
ROBERT R. CARR  
CLERK U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
LEXINGTON**

**CRIMINAL ACTION NO. 5:17-CR-43-DCR**

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**V.**

**PLEA AGREEMENT**

**ERIC CHRISTOPHER CONN**

**DEFENDANT**

\* \* \* \* \*

1. Pursuant to Federal Rule of Criminal Procedure ("Rule") 11(c), ERIC CHRISTOPHER CONN (hereinafter "the Defendant") will enter a plea of guilty to Counts 1 and 2 of the Information, charging violations of 18 U.S.C. §§ 641, Theft of Government Money, and 201(c)(1)(A), Paying Illegal Gratuities. Pursuant to Rule 11(c)(1)(A) and this agreement, the United States will move at sentencing to dismiss Counts 1 through 18 of the Indictment in *United States v. Eric Christopher Conn, et al.*, Lexington Criminal Action No. 16-CR-22, as to the Defendant.

2. The United States and the Defendant agree that the essential elements of Count 1 are:

- (a) That the money described in the indictment belonged to the United States government and had a value in excess of \$1,000 at the time alleged;
- (b) That the defendant stole or knowingly converted such money to the defendant's own use or the use of another; and
- (c) That the defendant did so knowing the money was not his and with

intent to deprive the owner of the use of the money.

The United States and the Defendant agree that the essential elements of Count 2 are:

- (a) That the defendant directly or indirectly gave something of value to a public official; and
- (b) That the defendant did so for an official act performed or to be performed by the public official, other than as provided by law for the proper discharge of his official duty.

3. The Defendant agrees that the United States would prove the facts described in Attachment A enclosed with this Plea Agreement beyond a reasonable doubt at trial. The Defendant further agrees that these facts fairly and accurately describe the Defendant's actions and involvement in the offenses for which he was charged, and to which he is pleading guilty, and establish the essential elements of these offenses beyond a reasonable doubt. The Defendant understands the nature and elements of the crimes to which guilt is admitted and agrees that the factual statement in support of the guilty plea the Defendant has signed is true and will be submitted as evidence in this case. The Defendant further understands that the factual statement in support of the guilty plea the Defendant has signed may be received into evidence in any litigation involving the United States and Defendant. The Defendant hereby waives any defense based on any applicable statutes of limitations and agrees that the Indictment in *United States v. Eric Christopher Conn, et al.*, Lexington Criminal Action No. 16-CR-22, and the Information, are timely for all purposes.

4. The Defendant understands that a violation of 18 U.S.C. § 641 carries a maximum sentence of not more than ten years of imprisonment; a term of supervised



release of not more than three years; a fine of not more than \$250,000 or twice the pecuniary gain or loss from the offense, pursuant to 18 U.S.C. § 3571(d); and forfeiture of property, real and personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 641, and any property traceable to such property. The Defendant further understands that a violation of 18 U.S.C. § 201(c)(1)(A) carries a maximum sentence of not more than two years of imprisonment; a term of supervised release of not more than one year, a fine of not more than \$250,000; forfeiture of property, real and personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 201(c)(1)(A), and any property traceable to such property. The Defendant agrees that the two statutory maximum terms of imprisonment shall run consecutively. In addition, the Defendant agrees to pay a mandatory special assessment of \$200 and the Defendant will pay this assessment by cashier's check or money order to the U.S. District Court Clerk at the time of the entry of the guilty plea.

5. Pursuant to Rule 11(c)(1)(B), the United States and the Defendant agree upon and recommend the following sentencing guidelines calculations, and they may object to or argue in favor of other calculations. These recommendations do not bind the Court. As to Count 1 of the Information:

- (a) United States Sentencing Guidelines (U.S.S.G.), November 1, 2016, manual, will determine the Defendant's guidelines range and U.S.S.G. §2B1.1 is the appropriate guidelines provision for this offense.
- (b) Pursuant to U.S.S.G. §1B1.3, the Defendant's relevant conduct includes the facts set forth in Attachment A enclosed with this agreement.
- (c) Pursuant to U.S.S.G. §2B1.1(a)(2), the base offense level is 6.

- (d) Pursuant to U.S.S.G. §2B1.1(b)(1), increase the offense level by *not less than 22* for loss totaling more than \$25,000,000.
- (e) Pursuant to U.S.S.G. §2B1.1(b)(10)(C), increase the offense level by **2** for using sophisticated means.
- (f) Pursuant to U.S.S.G. §3B1.1(a), increase the offense level by **4** for organizing or leading a criminal activity involving five or more participants.
- (g) Pursuant to U.S.S.G. §3B1.3, increase the offense level by **2** for abusing a position of trust and use of a special skill.
- (h) Pursuant to U.S.S.G. §3C1.1, increase the offense level by **2** for obstructing justice.

As to Count 2 of the Information:

- (i) United States Sentencing Guidelines (U.S.S.G.), November 1, 2016, manual, will determine the Defendant's guidelines range and U.S.S.G. §2C1.2 is the appropriate guidelines provision for this offense.
- (j) Pursuant to U.S.S.G. §1B1.3, the Defendant's relevant conduct includes the facts set forth in Attachment A enclosed with this agreement.
- (k) Pursuant to U.S.S.G. §2C1.2(a)(2), the base offense level is **9**.
- (l) Pursuant to U.S.S.G. §2C1.2(b)(1), increase the offense level by **2** for offering more than one gratuity.
- (m) Pursuant to U.S.S.G. §2C1.2(b)(2) and §2B1.1(b)(1)(E), increase the offense level by **8** as the value of the gratuity exceeded \$95,000.
- (n) Pursuant to U.S.S.G. §2C1.2(b)(3), increase the offense level by **4** as the offense involved a public official in a high-level decision-making position.
- (o) Pursuant to U.S.S.G. §3C1.1, increase the offense level by **2** for obstructing justice.

Additionally:



(p) Pursuant to U.S.S.G. §3E1.1 and unless the Defendant commits another crime, obstructs justice, or violates a court order, decrease the offense level by 2 levels for the Defendant's acceptance of responsibility. If the offense level determined prior to this 2-level decrease is level 16 or greater, the United States will move at sentencing to decrease the offense level by 1 additional level based on the Defendant's timely notice of intent to plead guilty.

(q) Pursuant to U.S.S.G. §5E1.1, restitution in the amount of \$46,549,193.01 which reflects the actual fraud loss to the Social Security Administration, as calculated by the government as of October 21, 2016, as a result of the violation of 18 U.S.C. § 641. The restitution will be paid to the Commissioner of the Social Security Administration, as the victim, at the following address: Social Security Administration, Debt Management Section, ATTN: Court Refund, P.O. Box 2861, Philadelphia, PA 19122.

6. No agreement exists about the Defendant's criminal history category pursuant to U.S.S.G. Chapter 4, but the Defendant understands, based upon information now available to the government, that the United States expects to take the position at sentencing that the Defendant's Criminal History Category is I.

7. The Defendant will not file a motion for a decrease in the offense level based on a mitigating role pursuant to U.S.S.G. §3B1.2 or a departure motion pursuant to U.S.S.G. Chapter 5, Parts H or K.

8. The Defendant waives the right to appeal the guilty pleas, convictions, sentence, fine, order of restitution, or order of forfeiture in any post-conviction proceeding, including but not limited to a proceeding under 28 U.S.C. § 2255. The Defendant waives the right to appeal any determination made by the Court at sentencing with the sole exception that the Defendant may appeal any aspect of the sentence if the length of the term of imprisonment exceeds the statutory maximum. Except for claims of ineffective

assistance of counsel, the Defendant also waives the right to attack collaterally the guilty pleas, convictions, and sentence, or any other order issued in this matter.

9. The United States will recommend releasing the Defendant on the current conditions set by the Court in this case for future court appearances if the Defendant does not violate the terms of the order setting conditions of release.

10. The Defendant understands that the Court has an obligation to determine whether, and in what amount, restitution applies in this case under 18 U.S.C. § 3663 and 18 U.S.C. § 3663A, which may be in addition to the restitution amount agreed-upon above. The Defendant agrees that this may include restitution for all losses caused by the Defendant's criminal conduct, including any restitution ordered to ODAR Employee A, as described in Attachment A to this plea agreement. The Defendant waives any defense or objection to any action to enforce the collection of financial obligations to be imposed in connection with this prosecution, including, but not limited to, all collection procedures authorized by 28 U.S.C. § 3001, 18 U.S.C. § 3664(j)(2), or 18 U.S.C. § 3613(f).

11. Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), the Defendant agrees to the imposition of a money judgment in favor of the United States for the sum of \$5,750,404.46, which is the value of property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 641 that he received. The Defendant further agrees that the forfeiture of assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the Defendant in addition to the forfeiture. The Defendant agrees to waive any claim



or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of assets by the United States or its subdivisions.

12. The Defendant agrees to pay to the United States, for forfeiture, a sum of \$150,000.00 from the sale of his residence at 241 Northmonte Drive, Pikeville, Kentucky 41501, before the time of sentencing, as a substitute asset under 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b). The Defendant further agrees to the forfeiture of the real property titled in his name located at 9420 US Highway 23 South, Stanville, Kentucky 41642, and all appurtenances and improvements thereto (including but not limited to five mobile homes and statuary at 9420 US Highway 23 South, Stanville, Kentucky 41642), to the United States as a substitute asset under 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b). Within 120 days from Defendant's sentencing, the Defendant will list these real properties for sale with a realtor(s) approved by the United States. The Defendant will need the United States' consent to sell the real property for an amount below \$500,000.00, and agrees to pay immediately the proceeds from the sale(s), less realtor fees, taxes, and other fees, to the United States as substitute assets. The combined proceeds described in this paragraph shall be applied against the balance of the Defendant's money judgment.

13. The Defendant also agrees to forfeit to the United States any other property owned by the Defendant up to the value of the \$5,750,404.46 money judgment, whether real or personal, because the traceable proceeds described above, as a result of act(s) and omission(s) of the Defendant, (a) cannot be located upon the exercise of due diligence;

(b) have been transferred or sold to, or deposited with, a third party; (c) have been placed beyond the jurisdiction of the court; (d) have been substantially diminished in value; and/or (e) have been commingled with other property which cannot be divided without difficulty.

14. The Defendant agrees not to file, or assist others in filing, a claim to the forfeitable property in any civil proceeding, administrative or judicial, that may be initiated. The Defendant knowingly and voluntarily agrees to waive, with regard to the forfeiture of traceable proceeds and substitute assets: the right to notice of any forfeiture proceeding; the right to a jury trial; all constitutional, legal, and equitable defenses; any claim under the Eighth Amendment to the United States Constitution, including any claim of excessive fine; and the requirements of Rules 32.2 and 43(a) regarding notice of forfeiture in the charging instrument, announcement of forfeiture at sentencing, and incorporation of forfeiture in the judgment.

15. The Defendant and Defendant's attorney also understand that the United States may file motions for preliminary and final orders of forfeiture regarding the property described herein, and they agree that the United States may file such motions unopposed and may state in the certificates of conference for the motions that the Defendant has no objection to the relief sought without having to further contact the Defendant or Defendant's attorney.

16. The Defendant agrees to cooperate fully with the United States Department of Justice by making a full and complete financial disclosure. Within 30 days of pleading guilty, the Defendant agrees to complete and sign a United States Department of Justice



Form OBD-500 financial disclosure affidavit disclosing all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party, and disclosing any transfer of assets that has taken place within three years preceding the entry of this plea agreement. The Defendant will submit to an examination, which may be taken under oath and may include a polygraph examination. The Defendant will not encumber, transfer, or dispose of any monies, property, or assets under the Defendant's custody or control without written approval from the United States Department of Justice. If the Defendant is incarcerated in connection with this case, the Defendant will participate in the Bureau of Prisons Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments. If the Defendant fails to comply with any of the provisions of this paragraph, the United States, in its discretion, may refrain from moving the Court pursuant to U.S.S.G. § 3E1.1(b) to reduce the offense level by one additional level, and may argue that the Defendant should not receive a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a).

17. The Defendant understands and agrees that, pursuant to 18 U.S.C. § 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States. If the Court imposes a schedule of payments, the Defendant agrees that it is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. The Defendant waives any requirement for

demand of payment on any fine, restitution, or assessment imposed by the Court and agrees that any unpaid obligations will be submitted to the United States Treasury for offset. The Defendant authorizes the United States to obtain the Defendant's credit reports at any time. The Defendant authorizes the U.S. District Court to release funds posted as security for the Defendant's appearance bond in this case, if any, to be applied to satisfy the Defendant's financial obligations contained in the judgment of the Court.

18. If the Defendant violates any part of this Agreement, or if the guilty pleas pursuant to this Agreement or convictions are vacated or withdrawn, the United States may void this Agreement and seek an indictment for any violations of federal laws, and the Defendant waives any right to challenge the initiation of additional federal charges. In such event, the Defendant waives any objections based upon delay in prosecution. The Defendant further agrees that if the guilty pleas pursuant to this Agreement are withdrawn for any reason, the Defendant's factual statements in support of the guilty pleas will be admissible as evidence in all judicial proceedings.

19. If the Defendant abides by the terms of this Agreement, the Fraud and Money Laundering and Asset Recovery Sections of the Criminal Division of the United States Department of Justice agree not to prosecute the Defendant for any additional criminal charges based upon the conduct underlying and related to the Defendant's pleas of guilty in this case.

20. This Agreement does not bind any federal, state, or local prosecuting authority other than the United States Department of Justice, Criminal Division, Fraud and



Money Laundering and Asset Recovery Sections. Nothing in this Agreement shall be construed to release the Defendant from possible related or consequential civil liability to any individual, legal entity, or the United States, nor does this Agreement provide any limitation or release from liability arising out of any acts of violence.

21. The Defendant understands and acknowledges that as a result of this plea, pursuant to 42 U.S.C. § 1320b-6(a)(2), the Defendant will be excluded from participating in all Social Security programs as a representative or health care provider. The Defendant waives the right to notice, hearing and judicial review, and agrees not to seek termination of this exclusion. Defendant agrees to complete and execute all necessary documents provided by any department or agency of the federal government, including but not limited to the Social Security Administration, to effectuate this exclusion within 60 days of receiving the documents. This exclusion will not affect the Defendant's right to apply for and receive benefits as a beneficiary under any Social Security Program.

22. This document, Attachment A enclosed with this document, and the sealed supplement contain the complete and only Plea Agreement between the United States and the Defendant. It supersedes all other plea agreements and may not be modified unless the modification is in writing and signed by all parties. References in this document to "Agreement" or "Plea Agreement" refer to both this document, Attachment A, and the sealed supplement. The United States has not made any other promises or representations to, or understandings or agreements with, the Defendant.

23. The Defendant has thoroughly reviewed all legal and factual aspects of this case with Defendant's attorney and is fully satisfied with the legal representation provided by Defendant's attorney. The Defendant has received satisfactory explanations from Defendant's attorney concerning each paragraph of this Plea Agreement, each of the Defendant's rights affected thereby, and the alternatives to entering a guilty plea. After conferring with counsel, the Defendant concedes guilt and has concluded that it is in the Defendant's best interest to enter this Agreement rather than proceeding to trial. The Defendant and the Defendant's attorney acknowledge that the Defendant understands this Agreement, that the Defendant's attorney has fully explained this Agreement to the

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Defendant, and that the Defendant's entry into this Agreement is voluntary and is not the result of force, threats, or promises other than those set forth in this Agreement.

KENNETH A. BLANCO  
ACTING ASSISTANT ATTORNEY GENERAL  
CRIMINAL DIVISION  
ATTORNEY FOR THE GOVERNMENT

Date: 3/24/17

By:

[Signature]  
Dustin M. Davis  
Trial Attorney

Date: 3/24/17

By:

[Signature]  
Elizabeth G. Wright  
Trial Attorney

Date: MAR 24, 2017

[Signature]  
ERIC CHRISTOPHER CONN  
DEFENDANT

Date: 3.24.17

[Signature]  
T. SCOTT WHITE  
ATTORNEY FOR DEFENDANT

# **ATTACHMENT A**



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
LEXINGTON**

**CRIMINAL ACTION NO.** \_\_\_\_\_

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**V.**

**FACTUAL BASIS**

**ERIC CHRISTOPHER CONN**

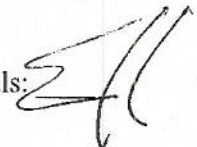
**DEFENDANT**

The United States could prove the following facts that establish the essential elements of the offense(s) beyond a reasonable doubt, and Eric Christopher Conn (“Defendant”) admits these facts:

**A. Background**

1. At all times relevant to this Factual Basis, Defendant was an attorney licensed to practice law in Kentucky and practiced law at Eric C. Conn, PSC (“the Conn Law Firm”), of which he was president and the sole shareholder. The Conn Law Firm, established in 1995, was a professional service corporation maintaining a principal office in Stanville, Kentucky that represented individuals throughout the Eastern District of Kentucky, and elsewhere, seeking Social Security disability benefits (“Claimants”).

2. As part of his practice, Defendant assisted Claimants in filing applications with field offices of the Social Security Administration (“the SSA”), primarily the SSA field office located in Prestonsburg, Kentucky (“Prestonsburg Field Office”), as well as by representing Claimants during the initial claims process before Kentucky’s Disability



Determination Services (“DDS”), located in Frankfort, Kentucky. In the event DDS denied benefits to Claimants, Defendant, through the originating SSA field office, typically requested hearings, to seek again an award of benefits, with the SSA’s Office of Disability Adjudication Review (“ODAR”) and represented Claimants during the hearing process.

3. In the event Claimants were awarded benefits, commonly referred to as a “favorable decision,” at either the DDS level or ODAR level, and had agreed to representation by Defendant, Defendant was awarded representative’s fees. These representative’s fees were either twenty-five percent of the total amount of benefits owed to Claimants, or the maximum amount permitted by the Social Security Act, which was between approximately \$5,300 and \$6,000. Claimants typically received their monthly disability benefits through interstate electronic funds transfers, including within Fleming County, in the Eastern District of Kentucky, and Defendant exclusively received his representative’s fees by United States Treasury check, which was delivered to the Conn Law Firm via the United States Postal Service.

#### **B. Huntington ODAR**

4. Beginning at least as early as 2004, and continuing through October 2011, all requests for hearings filed with the Prestonsburg Field Office were automatically forwarded to the ODAR located in Huntington, West Virginia (“Huntington ODAR”). Between 2004 and 2011, the Huntington ODAR was staffed by various SSA Administrative Law Judges (“ALJs”), including, and for the entirety of that period, ALJ David Black Daugherty (“Daugherty”). Although the Huntington ODAR was principally located in Huntington, West Virginia, the Huntington ODAR also maintained an unstaffed



satellite office in Prestonsburg, Kentucky ("Prestonsburg Satellite ODAR"), which required ALJs serving at the Huntington ODAR to periodically travel to Prestonsburg, Kentucky to adjudicate claims of disability.

**C. Contracted Medical Professionals & RFCs**

5. When Claimants' applications were denied by DDS, and upon requesting hearings with the Prestonsburg Field Office, Defendant routinely contracted with medical professionals to perform either physical or mental evaluations of Claimants, as well as prepare accompanying evaluation reports. Additionally, Defendant requested that the evaluating medical professional also prepare accompanying medical source statements, commonly referred to as Residual Functional Capacity forms ("RFCs"), which sought to quantify Claimants' remaining ability to perform work. Upon completion of the evaluation reports and the accompanying RFCs, Defendant submitted the same to the Huntington ODAR in support of disability determinations.

**D. Alfred Bradley Adkins & Mental Pre-Completed RFCs**

6. In or around September 2004, Defendant contracted with Alfred Bradley Adkins, Ph.D. ("Adkins"), a clinical psychologist, to perform mental evaluations of Claimants, as well as prepare the accompanying evaluation reports and RFCs. When Defendant contracted with Adkins, Defendant told Adkins that the evaluation reports and RFCs would be submitted to the SSA in support of disability determinations, and Defendant maintained this understanding with Adkins throughout the course of their relationship. Defendant repeatedly emphasized to Adkins that the RFCs were of paramount importance as those were the documents most heavily relied upon by the Huntington

ODAR ALJs in making disability determinations. As a reflection of Adkins' knowledge of the importance of the RFCs to the disability determination process and to Defendant, Adkins refused to sign the RFCs until he received payment for his services from Defendant.

7. Although Adkins' evaluation reports indicated that Adkins' evaluations spanned three and a half hours and that Adkins administered IQ tests to Claimants, in reality, regarding evaluations conducted at the Conn Law Firm, Adkins' evaluations did not span more than thirty minutes, and Adkins did not appropriately administer IQ tests, but rather estimated Claimants' IQs. Adkins falsified the results of IQ tests in his evaluation reports to make the Claimants appear more disabled.

8. When Adkins initially completed the RFCs at Defendant's request, Adkins indicated the Claimants were so disabled that they were unable to perform any work whatsoever. Adkins' early attempts to complete the RFCs caused Defendant to confront and counsel Adkins that completing the forms in such a way would cause Adkins to lose his credibility with the Huntington ODAR ALJs. Defendant then instructed Adkins on how to complete the RFCs so that the RFCs appeared credible.

9. When Adkins next completed the RFCs, Adkins indicated that Claimants were not disabled sufficiently to warrant findings of disability. Adkins' second attempt to complete RFCs caused Defendant to remind Adkins that "[Defendant was] in the *disability* business." At Defendant's suggestion, Adkins then altered the RFCs to reflect that Claimants had conditions sufficiently debilitating to justify awarding disability benefits.

10. Thereafter, beginning in or around 2006, because Adkins said he disliked completing the RFCs, Adkins told Defendant, "Check whatever you want [on the RFCs]



and sign it for me; it's all bulls--t anyway." Defendant declined to sign Adkins' name to the RFCs, but Defendant nevertheless completed the RFCs, eventually creating five templated versions addressing mental disability ("Mental Pre-completed RFCs"). These Mental Pre-completed RFCs were sufficiently debilitating so that Claimants on whose behalf they were submitted plainly appeared disabled, irrespective of Claimants' actual ability to perform work.

11. Upon Defendant asking Adkins to perform mental evaluations of Claimants, Adkins would also ask Defendant if Daugherty was the ALJ assigned to the case. In those instances, Adkins, believing Daugherty would grant disability benefits regardless of the thoroughness of the evaluation, drafted perfunctory evaluation reports. Notwithstanding the ALJ assigned to a particular case, beginning in or around 2006 and continuing through in or around May 2011, Defendant provided Adkins with Mental Pre-completed RFCs for signature, which Adkins signed (totaling more than 200 of them) without alteration. Defendant, knowing these signed Mental Pre-completed RFCs were fraudulent, nevertheless submitted the same, together with the perfunctory evaluations reports containing falsified IQ test results that were also fraudulent, to the Huntington ODAR in support of disability determinations. When Adkins signed the forms, both he and Defendant understood that his signature indicated that these were genuine assessments made by Adkins based on an examination, when they were neither genuine assessments nor were they made by Adkins.

12. At the time Defendant contracted with Adkins, and throughout the course of their relationship, Adkins also performed mental evaluations for DDS. Adkins, concerned





that Defendant might ask him to evaluate Claimants that he previously evaluated for DDS, instructed Defendant, "Be sure to tell me if I've already seen a person for DDS, so I can make it a little different."

**E. Unindicted Co-Conspirators, Physical Pre-Completed RFCs, Falsified Summary Reports & Falsified X-Ray Reports**

13. At or around the same time, Defendant pre-completed, ultimately fabricating approximately fifteen templated versions of, RFCs addressing physical disability ("Physical Pre-completed RFCs") indicating Claimants had limitations considered disabling by the SSA, irrespective of Claimants' actual ability to perform work. Beginning in or around 2005 and continuing through in or around May 2011, Defendant provided the same to other medical professionals, including Unindicted Co-conspirator A and Unindicted Co-conspirator B, with whom Defendant contracted to perform physical evaluations of Claimants. Upon Unindicted Co-conspirator A, Unindicted Co-conspirator B, and other medical professionals signing, without alteration, these Physical Pre-completed RFCs, Defendant, knowing these Physical Pre-completed RFCs were fraudulent, nevertheless submitted the same to the Huntington ODAR in support of disability determinations. These Physical Pre-completed RFCs were sufficiently debilitating so that ALJs receiving these documents in support of disability determinations, if accepted as true, would necessarily award benefits to Claimants on whose behalf they were submitted.

14. On occasion, beginning in or around 2006 and continuing through in or around May 2011, when Claimants missed appointments with Unindicted Co-conspirator



B, Defendant falsified medical reports purporting to summarize Claimants' existing medical records ("Falsified Summary Reports") indicating Claimants had limitations considered disabling by the SSA, irrespective of Claimants' actual ability to perform work, and provided the same to Unindicted Co-conspirator B for signature. Unindicated Co-conspirator B signed the Falsified Summary Reports, without having first reviewed the appropriate medical records, and returned the same to Defendant for submission to the SSA. Defendant, knowing these Falsified Summary Reports were fraudulent, nevertheless submitted the same to the Huntington ODAR in support of disability determinations.

15. Moreover, and on occasion, beginning in 2008 and continuing through in or around May 2011, Defendant sent Claimants to Clinic A, a medical facility located in the Eastern District of Kentucky, to have X-Rays taken, and further instructed Clinic A not to read the X-Ray images. Defendant then falsified medical reports purportedly summarizing the X-Ray images ("Falsified X-Ray Reports") indicating Claimants had limitations considered disabling by the SSA, irrespective of Claimants' actual ability to perform work, and provided the same to Unindicted Co-conspirator B for signature. Unindicated Co-conspirator B signed the Falsified X-Ray Reports, without having first reviewed the X-Ray images, and returned the same to Defendant for submission to the SSA. Defendant, knowing these Falsified X-Ray Reports were fraudulent, nevertheless submitted the same to the Huntington ODAR in support of disability determinations.

**F. David Black Daugherty**

16. In or around October 2004, as Defendant's practice was expanding throughout the Eastern District of Kentucky, while at the Prestonsburg Satellite ODAR,



Defendant was confronted by Daugherty. During that encounter, Daugherty remarked to Defendant that he (Defendant) was the beneficiary of many of Daugherty's decisions. Upon giving that reminder, Daugherty then solicited Defendant to give Daugherty \$5,000 to aid a Daugherty-family member with expenses associated with addiction rehabilitation. Because Defendant did not agree to do so at that time, later that afternoon, Daugherty contacted Defendant by telephone and remarked that Defendant was making a significant amount of money on decisions rendered by Daugherty, and that Daugherty "[needed] to have that money." Defendant, knowing that the success of his SSA disability practice depended on having a good relationship with Daugherty, assented and, soon thereafter, paid Daugherty \$5,000, in cash, at the Prestonsburg Satellite ODAR.

17. The following month, Daugherty again contacted Defendant by telephone and again stated that he (Daugherty) needed money for a Daugherty-family member's addiction rehabilitation. Upon Defendant asking Daugherty how much money was needed, Daugherty informed Defendant that Daugherty needed "about \$10,000 *a month*." Defendant, having already paid Daugherty once and understanding that this payment had to be made for continued success in cases pending with Daugherty, agreed to pay Daugherty \$10,000, in cash, and did so that same month when Daugherty traveled to the Prestonsburg Satellite ODAR. At the time Defendant paid Daugherty, Daugherty remarked, "let's not be stupid here," cautioning Defendant to be careful in withdrawing the money from the bank (because Daugherty was aware of banks' reporting obligations for certain transactions), and advising Defendant that he (Daugherty) would not deposit all the money or do so all at once (for the same reason).



18. Thereafter, beginning in or around December 2004 and continuing through in or around April 2011, Defendant paid Daugherty monthly for awarding disability benefits to Claimants. Daugherty typically awarded benefits to Claimants in approximately twenty to thirty-five of Defendant's cases per month, and because Defendant ultimately paid Daugherty \$400 per favorable decision, such resulted in Defendant paying Daugherty between \$8,000 and \$14,000, in cash, per month. During this period, and at Defendant's direction, Conn Law Firm employees periodically withdrew cash from the Conn Law Firm company bank account in increments below \$10,000, so as to intentionally avoid initiating the bank's obligation to file a Currency Transaction Report with the Internal Revenue Service. This practice also formed part of the effort to conceal the nature, source, and purpose of the withdrawals and the payments to Daugherty.

19. The United States Treasury checks representing Defendant's representative's fees for the Claimants, which had been delivered to the Conn Law Firm via the United States Postal Service, were deposited into the Conn Law Firm company bank account throughout this time period, as Defendant knew. Such funds were thereafter used not only to fund the above-described withdrawals and payments to Daugherty as part of the fraudulent scheme, but also to make purchases and conduct other expenditures greater than \$10,000.

20. As a result of being financially incentivized, Daugherty not only decided Defendant's cases that were assigned to him per Huntington ODAR policy, but also sought out Defendant's unassigned cases as well as cases that had been assigned to other Huntington ODAR ALJs, and either assigned or reassigned those cases to himself. In those

instances when Daugherty either assigned previously unassigned cases or reassigned cases from other Huntington ODAR ALJs, Daugherty awarded benefits to Claimants without holding hearings, a practice commonly referred to as granting decisions "On the Record," or "OTR."

21. In order to justify Daugherty granting OTR decisions, Claimants' files needed to contain medical evidence purportedly sufficient to indicate Claimants had limitations considered disabling by the SSA, thereby averting the need for a hearing. Thus, it became imperative for Defendant to submit medical evidence that plainly justified a finding of disability. Consequently, and on a monthly basis, Daugherty contacted the Conn Law Firm and provided the identity of Claimants for whom Daugherty intended to award benefits, and specifically requested that Defendant provide to Daugherty either mental or physical evidence that was sufficiently debilitating. These monthly telephone calls were memorialized by Conn Law Firm employees and these lists of Claimants' names and the requested type of medical evidence, commonly referred to as "DB Lists," were circulated monthly to various employees within the Conn Law Firm. On occasion, Defendant and other Conn Law Firm employees also requested additions to the DB Lists, and Daugherty granted those Claimants benefits, as well.

22. During this relationship with Daugherty, Defendant contracted with and submitted the evaluation reports together with Mental and Physical Pre-completed RFCs signed by Adkins, Unindicted Co-conspirator A, Unindicted Co-conspirator B, and other medical professionals to Daugherty in support of disability determinations, as described above. Defendant typically submitted this fraudulent documentation to Daugherty via



interstate facsimile or wire transmissions from the Conn Law Firm to the Huntington ODAR.

23. Even after Daugherty began to award benefits via OTR decisions for some of Defendant's cases, Daugherty continued to hold hearings at the Prestonsburg Satellite ODAR for Defendant's cases that were originally assigned to Daugherty. Then, in or around 2006, because Defendant's practice was so expansive and because the vast majority of the hearings Daugherty held at the Prestonsburg Satellite Office were for cases associated with Defendant, Daugherty, fearing it would draw unwanted attention and because other claimant representatives were complaining, decided to discontinue holding hearings for Defendant's cases and grant favorable decisions via OTR decision exclusively.

24. Although Defendant previously made payments to Daugherty exclusively at the Prestonsburg Satellite ODAR, because Daugherty discontinued traveling to Prestonsburg, Defendant agreed with Daugherty to make cash payments to Daugherty in Louisa, Kentucky, approximately half-way between the Huntington ODAR and the Prestonsburg Satellite ODAR.

25. Beginning in or around 2006 and continuing through in or around April 2011, save three occasions Defendant recalls, Defendant met Daugherty monthly at either a gas station or in a restaurant parking lot in Louisa, Kentucky and provided Daugherty with an envelope containing the amount of cash corresponding to the number of OTR decisions Daugherty was granting that month. Daugherty would in turn provide Defendant with an envelope containing advance copies of his OTR decisions.



26. During that timeframe, Defendant met Daugherty, on one occasion, at Defendant's office in Stanville, Kentucky, and, on one occasion, at Defendant's satellite office in Ashland, Kentucky and delivered the monthly cash payments to Daugherty. Moreover, on one occasion, in or around 2006, Defendant brought a Conn Law Firm employee ("Conn Law Firm Employee A") with him to meet Daugherty in Huntington, West Virginia, for the purpose of not only delivering Daugherty's monthly payment, but also to see Daugherty's new boat. After viewing the boat, and outside the presence of Conn Law Firm Employee A, Defendant delivered the monthly cash payment to Daugherty, which was concealed in an envelope, outside of a restaurant located in Huntington, West Virginia.

27. During the course of this arrangement, in or around January 2008, Daugherty contacted Defendant by telephone and confronted Defendant about the repetitive submission of the Physical Pre-completed RFCs. Daugherty advised Defendant, "This isn't going to work," and instructed Defendant to create and submit a wider variety of Physical Pre-Completed RFCs. During that same telephone call, Daugherty criticized the quality of the Physical Pre-completed RFCs, remarking to Defendant, "Who's filling these out for you? It must be an eighth grader writing these for you." At that time, Defendant discontinued using the original five versions of the Physical Pre-completed RFCs, created ten new versions of Physical Pre-completed RFCs, and submitted these newer versions to Daugherty in support of disability determinations. The new ten Physical Pre-completed RFCs, created by Defendant, like their predecessors, reported limitations considered disabling by the SSA, irrespective of Claimants' actual ability to perform work.

**G. Scope of Fraudulent Conduct**

28. Beginning in or around 2005 and continuing through in or around May 2011, Defendant knowingly and willfully submitted thousands of Mental and Physical Pre-completed RFCs, Falsified Summary Reports, and Falsified X-Ray Reports to the Huntington ODAR in support of disability determinations. In authoring well over 1,700 favorable decisions for Claimants wherein Defendant made cash payments to Daugherty and had submitted Mental and Physical Pre-completed RFCs in support of disability determinations, and despite Daugherty's knowledge of the fraudulent nature of these documents, nevertheless, Daugherty directly relied upon same, often excerpting language from the Mental and Physical Pre-completed RFCs into his decisions.

29. Daugherty's favorable decisions, as well as decisions authored by other ALJs, that were predicated upon the fraudulent documents, obligated the SSA to pay in excess of \$550,000,000 in lifetime benefits to the Claimants on whose behalf they were submitted. These decisions actually caused the SSA to pay approximately \$46,549,193.01 in disability benefits to Claimants that the SSA has otherwise determined these Claimants were not entitled to receive, based upon a calculation completed by the SSA for approximately 1,700 claimants as of October 21, 2016. Moreover, as a result of Defendant submitting the fraudulent documents, and disability benefits ultimately being awarded to Claimants predicated on the same, Defendant received approximately \$5,750,404.46 in representative fees for those approximately 1,700 claimants.

30. In other words, Defendant did knowingly and willfully steal, purloin, and convert to his own use, and the use of others, money of the SSA, an agency of the United



States, having a value in excess of \$1,000.00, with intent to deprive the SSA of the use and benefit of the money so taken.

#### **H. *The Wall Street Journal* Article**

31. On May 19, 2011, *The Wall Street Journal* published an article ("Article") critical of the Huntington ODAR, particularly of the practices of Daugherty. The Article focused on Daugherty's exceedingly high rate of approving disability benefits, as well as his seemingly inappropriate relationship with Defendant.

32. Subsequent to the Article's publication, Defendant spoke with Daugherty only on few occasions, despite Daugherty's repeated efforts to contact him. One occasion was the day the Article was published. On that day, Defendant received a telephone call from Daugherty while Defendant was in Las Vegas, Nevada. During that telephonic conversation, as Defendant recalls, Daugherty remarked to Defendant, "If we keep our mouths shut and don't say anything against each other, we've got nothing to worry about. Don't get scared and run off to the Feds."

#### **I. Destruction of Records**

33. After the Article's publication, on or about May 25, 2011, federal agents with the SSA, Office of the Inspector General ("OIG") met with Defendant at the Conn Law Firm and made inquiries regarding Defendant's relationship with Daugherty, ultimately notifying Defendant of the existence of a federal investigation. Soon thereafter, in or around June 2011, Defendant, knowing that the OIG was investigating the nature of Defendant's relationship with Daugherty, directed Conn Law Firm employees to delete from computers or destroy hard copies of both the Mental and Physical Pre-completed



RFCs that were maintained at the Conn Law Firm, as well as to delete from office computers any locatable DB Lists, and other Daugherty-related documents. Further, in an effort to conceal potential incriminating evidence of his illicit relationship with Daugherty, Defendant also directed employees to destroy at least one computer hard drive, which was done on the premises of the Conn Law Firm.

**J. Retaliation**

34. Also after the Article's publication, the Huntington ODAR reshuffled its management staff, including temporarily demoting then-Chief ALJ Charlie Paul Andrus ("Andrus"). In or around June 2011, Andrus, knowing that a Huntington ODAR employee ("ODAR Employee A") had provided information to both the OIG and *The Wall Street Journal* regarding Defendant's relationship with Daugherty, which ultimately led to Andrus' temporary demotion, met with Defendant in Prestonsburg, Kentucky. During that meeting, Andrus identified ODAR Employee A to Defendant, and further suggested that ODAR Employee A needed to be discredited. Andrus, together with Defendant, formulated a scheme to have ODAR Employee A terminated from his/her employment with the Huntington ODAR, essentially by having ODAR Employee A followed, and filmed not working, when ODAR Employee A was scheduled to be working from home.

35. Accordingly, Andrus, through another ODAR employee, provided Defendant with ODAR Employee A's home address and work schedule. Upon receiving the schedule, Defendant sent various Conn Law Firm employees to ODAR Employee's A's residence in an effort to film ODAR Employee A not working from his/her residence. After several failed attempts to film ODAR Employee A violating his/her work-from-home

schedule, Defendant directed a Conn Law Firm employee to film ODAR Employee A at any time, and at any location, and make the recording appear as if ODAR Employee A had violated the work-from-home policy.

36. In or around August 2011, a Conn Law Firm employee filmed ODAR Employee A outside the Huntington ODAR, and made the recording appear as if the recording was created on a day that ODAR Employee A was scheduled to work from home. Defendant notified Andrus of the same, and then directed that the film be mailed from the Conn Law Firm to the Huntington ODAR in an effort to have ODAR Employee A's employment with the Huntington ODAR terminated.

37. Defendant knew it was wrong to enter into an agreement with Andrus to interfere with ODAR Employee A's employment and livelihood, but he together with Andrus, wanted to retaliate against ODAR Employee A for providing truthful information

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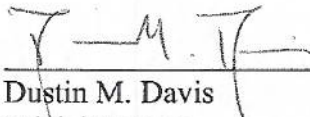
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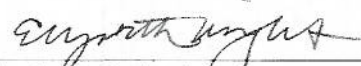
to law enforcement officers and *The Wall Street Journal* about the possible commission of Federal offenses.

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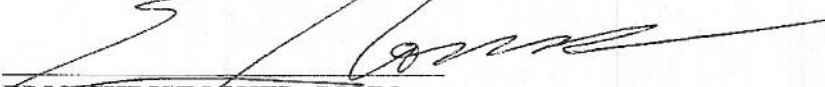
Date: 3/24/17

By:   
Dustin M. Davis  
Trial Attorney


Date: 3/24/17


By:   
Elizabeth G. Wright  
Trial Attorney

Date: Mar 24, 2017

  
ERIC CHRISTOPHER CONN  
DEFENDANT

Date: 3.24.17

  
T. SCOTT WHITE  
ATTORNEY FOR DEFENDANT

  
Defendant's Initials: \_\_\_\_\_