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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

June 2012 Grand Jury

CR 12 00905

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 VICTORIA N. ONYEABOR,
16 GODWIN ONYEABOR,
17 DR. SRI J. WIJEGUNARATNE,
aka "Dr. J," and
HEIDI MORISHITA,

18 Defendants.

) Case No.

) I N D I C T M E N T

) [18 U.S.C. § 1349: Conspiracy
) to Commit Health Care Fraud;
) 18 U.S.C. § 1347: Health Care
) Fraud; 18 U.S.C. § 2: Causing
) an Act to be Done; 18 U.S.C.
) § 371: Conspiracy to Pay and
) Receive Health Care Kickbacks
) in Violation of 42 U.S.C.
) §§ 1320a-7b(b) (1) (A) and
) (2) (A)]

20 The Grand Jury charges:

21 COUNT ONE

22 [18 U.S.C. § 1349]

23 A. INTRODUCTORY ALLEGATIONS

24 At all times relevant to this Indictment:

25 The Conspirators

26 1. Defendant VICTORIA N. ONYEABOR ("V. ONYEABOR") was the
27 President, Chief Executive Officer, and Registered Agent for
28 Fendih Medical Supply Inc. ("Fendih"), a supplier of durable

1 medical equipment ("DME"), primarily power wheelchairs ("PWCs"),
2 located in San Bernadino, California.

3 2. Defendant GODWIN ONYEABOR ("G. ONYEABOR") was the
4 Secretary of Fendih. Among his duties, defendant G. ONYEABOR
5 delivered PWCs for Fendih.

6 3. Defendant DR. SRI J. WIJEGUNARATNE, also known as
7 ("aka") "Dr. J", was a physician licensed to practice medicine in
8 the State of California. Defendant WIJEGUNARATNE wrote medically
9 unnecessary PWC prescriptions and sold them to Fendih.

10 4. Defendant HEIDI MORISHITA ("MORISHITA") obtained
11 medically unnecessary PWC prescriptions and sold them to Fendih.

12 5. On or about September 20, 2005, defendant V. ONYEABOR
13 registered as the sole Incorporator and Registered Agent of
14 Fendih in State of California records.

15 6. In or around October 2005, defendant V. ONYEABOR opened
16 a corporate bank account for Fendih at Wells Fargo Bank, account
17 number xxxxxx8370. Defendant V. ONYEABOR maintained sole
18 signature authority on this account.

19 7. On or about May 22, 2006, defendant V. ONYEABOR
20 executed and submitted an application to Medicare to obtain and
21 maintain a Medicare provider number for Fendih.

22 8. On or about March 15, 2007, defendant V. ONYEABOR
23 executed and submitted an electronic funds transfer agreement
24 ("EFT") to Medicare, requesting that all future reimbursements
25 from Medicare be directly deposited into Fendih's Wells Fargo
26 corporate account.

27 9. On or about January 23, 2009, defendant V. ONYEABOR
28 opened a second corporate bank account for Fendih at Citibank,

1 account number xxxxx4256. Defendant V. ONYEABOR maintained sole
2 signature authority on this account.

3 10. On or about February 3, 2009, defendant V. ONYEABOR
4 executed and submitted an amended EFT agreement to Medicare,
5 requesting that all future reimbursements from Medicare be
6 directly deposited into Fendih's Citibank corporate account.

7 11. Between on or about January 9, 2007, and on or about
8 February 18, 2012, Fendih submitted to Medicare claims totaling
9 approximately \$1,498,155 for purported PWCs and related services,
10 and Medicare paid Fendih approximately \$978,818 on those claims.

11 The Medicare Program

12 12. Medicare was a federal health care benefit program,
13 affecting commerce, that provided benefits to individuals who
14 were over the age of 65 or disabled. Medicare was administered
15 by the Centers for Medicare and Medicaid Services ("CMS"), a
16 federal agency under the United States Department of Health and
17 Human Services ("HHS").

18 13. CMS contracted with private insurance companies to (a)
19 certify DME providers for participation in the Medicare program
20 and monitor their compliance with Medicare standards; (b) process
21 and pay claims; and (c) perform program safeguard functions, such
22 as identifying and reviewing suspect claims.

23 14. Individuals who qualified for Medicare benefits were
24 referred to as Medicare "beneficiaries." Each Medicare
25 beneficiary was given a Health Identification Card containing a
26 unique identification number ("HICN").

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28

1 15. DME companies, physicians, and other health care
2 providers that provided medical services that were reimbursed by
3 Medicare were referred to as Medicare "providers."

4 16. To obtain payment from Medicare, a DME company first
5 had to apply for and obtain a provider number. By signing the
6 provider application, the DME company agreed to abide by Medicare
7 rules and regulations.

8 17. If Medicare approved a provider's application, Medicare
9 would assign the provider a Medicare provider number, enabling
10 the provider (such as a DME company) to submit claims to Medicare
11 for services and supplies provided to Medicare beneficiaries.

12 18. To obtain and maintain their Medicare provider number
13 billing privileges, DME suppliers had to meet Medicare standards
14 for participation. The Medicare contractor responsible for
15 evaluating and certifying DME providers' compliance with these
16 standards was Palmetto GBA ("Palmetto").

17 19. From in or about October 2006 through the date of this
18 Indictment, Noridian Administrative Services ("Noridian")
19 processed and paid Medicare DME claims in Southern California.

20 20. Most DME providers, including Fendih, submitted their
21 claims electronically pursuant to an agreement with Medicare that
22 they would submit claims that were accurate, complete, and
23 truthful.

24 21. Medicare paid DME providers only for DME that was
25 medically necessary to the treatment of a beneficiary's illness
26 or injury, was prescribed by a beneficiary's physician, and was
27 provided in accordance with Medicare regulations and guidelines

28

1 that governed whether a particular item or service would be paid
2 by Medicare.

3 22. To bill Medicare for DME it provided to a beneficiary,
4 a DME provider was required to submit a claim (Form 1500).
5 Medicare required claims to be truthful, complete, and not
6 misleading. In addition, when a claim was submitted, the
7 provider was required to certify that the services or supplies
8 covered by the claim were medically necessary.

9 23. Medicare required a claim for payment to set forth,
10 among other things, the beneficiary's name and HICN, the type of
11 DME provided to the beneficiary, the date the DME was provided,
12 and the name and unique physician identification number ("UPIN")
13 or national provider identifier ("NPI") of the physician who
14 prescribed or ordered the DME.

15 24. Medicare had a co-payment requirement for DME.
16 Medicare reimbursed providers 80% of the allowed amount of a DME
17 claim and the beneficiary was ordinarily obligated to pay the
18 remaining 20%.

19 B. THE OBJECT OF THE CONSPIRACY

20 25. Beginning on or about January 9, 2007, and continuing
21 through on or about February 18, 2012, in San Bernardino County,
22 within the Central District of California, and elsewhere,
23 defendants V. ONYEABOR, G. ONYEABOR, and WIJEGUNARATNE, together
24 with others known and unknown to the Grand Jury, knowingly
25 combined, conspired, and agreed to commit health care fraud, in
26 violation of Title 18, United States Code, Section 1347.

1 C. THE MANNER AND MEANS OF THE CONSPIRACY

2 26. The object of the conspiracy was carried out, and to be
3 carried out, in substance, as follows:

4 a. Defendants V. ONYEABOR and G. ONYEABOR paid
5 individuals, including defendants WIJEGUNARATNE and MORISHITA,
6 for medically unnecessary PWC prescriptions for the purpose of
7 using those prescriptions to submit, and cause the submission of,
8 false and fraudulent claims to Medicare on behalf of Fendih.

9 b. After acquiring the false and fraudulent PWC
10 prescriptions, defendant V. ONYEABOR and her co-conspirators
11 would submit, and cause the submission of, false and fraudulent
12 claims to Medicare for PWCs and related accessories that were
13 purportedly provided by Fendih to Medicare beneficiaries.

14 c. As a result of the submission of false and
15 fraudulent claims, Medicare made payments to Fendih's corporate
16 bank accounts at Wells Fargo and Citibank.

17 d. Defendant V. ONYEABOR then transferred and
18 disbursed, and caused the transfer and disbursement of, monies
19 from Fendih'S corporate bank accounts to herself and to
20 defendants G. ONYEABOR and MORISHITA. Defendant V. ONYEABOR also
21 transferred and disbursed, and caused the transfer and
22 disbursement of, cash payments to defendants WIJEGUNARATNE and
23 MORISHITA from Medicare proceeds.

1 referenced below, together with others known and unknown to the
 2 Grand Jury, for the purpose of executing and attempting to
 3 execute the fraudulent scheme described above, knowingly and
 4 willfully caused to be submitted to Medicare for payment the
 5 following false and fraudulent claims purportedly for power
 6 wheelchairs and related accessories:

<u>COUNT</u>	<u>DEF</u>	<u>BENE- FICIARY</u>	<u>CLAIM NUMBER</u>	<u>DATED BILLED TO MEDICARE</u>	<u>AMOUNT BILLED TO MEDICARE</u>
TWO	V. ONYEABOR and G. ONYEABOR	M.S.	108031816780 000	01/30/08	\$4,500
THREE	V. ONYEABOR and G. ONYEABOR	J.V.T.	108032848386 000	01/30/08	\$4,500
FOUR	V. ONYEABOR and G. ONYEABOR	V.B.	109127804663 000	05/05/09	\$4,500
FIVE	V. ONYEABOR and G. ONYEABOR	C.U.	109177805972 000	06/25/09	\$4,500
SIX	V. ONYEABOR and G. ONYEABOR	C.T.	109229812863 000	08/15/09	\$4,500
SEVEN	V. ONYEABOR G. ONYEABOR and WIJEGUN- ARATNE	M.P.	111088476380 00	04/20/11	\$2,800
EIGHT	V. ONYEABOR G. ONYEABOR and WIJEGUN- ARATNE	W.W.	111158413470 00	04/23/11	\$2,800
NINE	V. ONYEABOR G. ONYEABOR and WIJEGUN- ARATNE	R.L.V.	111368330650 00	05/14/11	\$2,800

COUNT TEN

[18 U.S.C. §§ 371 and 2(b)]

A. INTRODUCTORY ALLEGATIONS

31. The Grand Jury incorporates by reference and re-alleges paragraphs 1 through 24 above of this Indictment as though set forth in their entirety here.

B. OBJECT OF THE CONSPIRACY

32. Beginning at least as earlier as on or about March 12, 2009, and continuing through at least on or about February 18, 2012, in San Bernardino County, within the Central District of California, and elsewhere, defendants V. ONYEABOR, G. ONYEABOR, WIJEGUNARATNE, and MORISHITA, together with others known and unknown to the Grand Jury, knowingly combined, conspired, and agreed to pay and receive kickbacks for patient referrals, in violation of Title 42, United States Code, Sections 1320a-7b(b) (1) (A) and (2) (A).

C. THE MANNER AND MEANS OF THE CONSPIRACY

33. The object of the conspiracy was carried out, and to be carried out, in substance, as follows:

a. Defendant V. ONYEABOR would maintain a valid Medicare provider number for Fendih in order to submit claims to Medicare for DME.

b. Defendant WIJEGUNARATNE would provide DME prescriptions to Fendih.

c. Defendant MORISHITA would provide DME prescriptions to Fendih.

1 d. Defendants V. ONYEABOR and G. ONYEABOR would pay,
2 and cause to be paid, kickbacks to defendants WIJEGUNARATNE and
3 MORISHITA in return for DME prescriptions that Fendih would use
4 to submit claims to Medicare.

5 C. OVERT ACTS

6 34. In furtherance of the conspiracy and to accomplish its
7 object, defendants V. ONYEABOR, G. ONYEABOR, WIJEGUNARATNE, and
8 MORISHITA, together with others known and unknown to the Grand
9 Jury, committed and wilfully caused other to commit the following
10 overt acts, among others, within the Central District of
11 California and elsewhere:

12 Overt Act No. 1: On or about May 16, 2009, defendants V.
13 ONYEABOR and G. ONYEABOR paid and caused to be paid \$3,000 to
14 defendant MORISHITA. This check, which was drawn upon Fendih's
15 Citibank account number xxxxx4256 (check number #576),
16 represented kickbacks for DME prescriptions provided by defendant
17 MORISHITA to Fendih.

18 Overt Act No. 2: On or about June 19, 2009, defendants V.
19 ONYEABOR and G. ONYEABOR paid and caused to be paid \$2,000 to
20 defendant MORISHITA. This check, which was drawn upon Fendih's
21 Citibank account number xxxxx4256 (check number #604),
22 represented kickbacks for DME prescriptions provided by defendant
23 MORISHITA to Fendih.

24 Overt Act No. 3: On or about July 24, 2009, defendants V.
25 ONYEABOR and G. ONYEABOR paid and caused to be paid \$3,000 to
26 defendant MORISHITA. This check, which was drawn upon Fendih's
27 Citibank account number xxxxx4256 (check number #508),
28

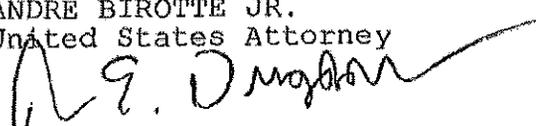
1 represented kickbacks for DME prescriptions provided by defendant
2 MORISHITA to Fendih.

3 Overt Act No. 4: In or around March 2011, defendants V.
4 ONYEABOR and G. ONYEABOR paid and caused to be paid cash
5 kickbacks to defendant WIJEGUNARATNE for DME prescriptions
6 provided by defendant WIJEGUNARATNE to Fendih.

7
8 A TRUE BILL

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10 131
Foreperson

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12
13 ANDRÉ BIROTTE JR.
14 United States Attorney

15 
16 ROBERT E. DUGDALE
17 Assistant United States Attorney
Chief, Criminal Division

18 RICHARD E. ROBINSON
19 Assistant United States Attorney
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 7. Attorneys for Plaintiff
 UNITED STATES OF AMERICA
 8.
 9.

10. UNITED STATES DISTRICT COURT
 11. FOR THE CENTRAL DISTRICT OF CALIFORNIA

12. UNITED STATES OF AMERICA,) 2:12-CR-00905-R
 13. Plaintiff,) FLEA AGREEMENT FOR DEFENDANT
 14. v.) VICTORIA N. ONYEABOR
 15. VICTORIA N. ONYEABOR,)
 16. Defendant.)
 17.)
 18. _____)

19. 1. This constitutes the plea agreement between VICTORIA N.
 20. ONYEABOR ("defendant") and the Fraud Section of the United States
 21. Department of Justice and the United States Attorney's Office for
 22. the Central District of California (collectively, "the USAO") in
 23. the above-captioned case. This agreement is limited to the USAO
 24. and cannot bind any other federal, state, local, or foreign
 25. prosecuting, enforcement, administrative, or regulatory
 26. authorities.
 27. \
 28.

1 state, local, or foreign prosecuting, enforcement,
2 administrative, or regulatory authority. This cooperation
3 requires defendant to:

4 a) Respond truthfully and completely to all questions
5 that may be put to defendant, whether in interviews, before a
6 grand jury, or at any trial or other court proceeding.

7 b) Attend all meetings, grand jury sessions, trials
8 or other proceedings at which defendant's presence is requested
9 by the USAO or compelled by subpoena or court order.

10 c) Produce voluntarily all documents, records, or
11 other tangible evidence relating to matters about which the USAO,
12 or its designee, inquires.

13 d) Truthfully disclose to law enforcement officials,
14 at a date and time to be set by the USAO, the location of,
15 defendant's ownership interest in, and all other information
16 known to defendant about, all monies, properties, and/or assets
17 of any kind, owned and/or controlled by her, including, but not
18 limited to, all monies, properties, and/or assets derived from or
19 acquired as a result of, or used to facilitate the commission of,
20 defendant's illegal activities, and to forfeit all right, title,
21 and interest in and to such items, specifically including all
22 right, title, and interest in and to all United States currency,
23 property and assets.

24 e) Pursuant to Title 21, United States Code, Section
25 853(p), as incorporated by Title 18, United States Code, Section
26 982(b)(1) and Title 28, United States Code, Section 2461(c),
27 forfeit substitute property, up to the value of any property,
28 real or personal, that constitutes or is derived, directly or

1 indirectly, from gross proceeds traceable to the commission of
2 such offense, and/or a sum of money equal to the total amount of
3 gross proceeds derived from such offense, if, by any act or
4 omission of defendant, the substitute property, or any portion
5 thereof, cannot be located upon the exercise of due diligence;
6 has been transferred, sold to or deposited with a third party;
7 has been placed beyond the jurisdiction of this court; has been
8 substantially diminished in value; or has been commingled with
9 other property that cannot be divided without difficulty.

10 f) Agree to the Court's entry of an order of
11 forfeiture at or before sentencing with respect to these assets
12 and to the forfeiture of the assets.

13 g) Take whatever steps are necessary to pass to the
14 United States clear title to the assets described above,
15 including, without limitation, the execution of a consent decree
16 of forfeiture and the completing of any other legal documents
17 required for the transfer of title to the United States.

18 h) Not to contest any administrative forfeiture
19 proceedings or civil judicial proceedings commenced against these
20 properties. With respect to any criminal forfeiture ordered as a
21 result of this plea agreement, defendant waives the requirements
22 of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding
23 notice of the forfeiture in the charging instrument,
24 announcements of the forfeiture sentencing, and incorporation of
25 the forfeiture in the judgment. Defendant acknowledges that
26 forfeiture of the assets is part of the sentence that may be
27 imposed in this case and waives any failure by the Court to
28 advise defendant of this, pursuant to Federal Rule of Criminal

1 Procedure 11(b) (1) (J), at the time the Court accepts defendant's
2 guilty plea.

3 i) Not to assist any other individual in any effort
4 falsely to contest the forfeiture of the assets described above.

5 j) Not to claim that reasonable cause to seize the
6 assets was lacking.

7 k) To prevent the transfer, sale, destruction, or
8 loss of any and all assets described above to the extent
9 defendant has the ability to do so.

10 4. For purposes of this agreement: (1) "Cooperation
11 Information" shall mean any statements made, or documents,
12 records, tangible evidence, or other information provided, by
13 defendant pursuant to defendant's cooperation under this
14 agreement or pursuant to the letter agreement previously entered
15 into by the parties dated September 14, 2012 ("the Letter
16 Agreement"); and (2) "Plea Information" shall mean any statements
17 made by defendant, under oath, at the guilty plea hearing and the
18 agreed to factual basis statement in this agreement.

19 THE USAO'S OBLIGATIONS

20 5. The USAO agrees to:

21 a) Not contest facts agreed to in this agreement.

22 b) Abide by all agreements regarding sentencing
23 contained in this agreement.

24 c) At the time of sentencing, move to dismiss the
25 remaining counts of the indictment as against defendant.

26 Defendant agrees, however, that at the time of sentencing the
27 Court may consider any dismissed charges in determining the
28

1 applicable Sentencing Guidelines range, the propriety and extent
2 of any departure from that range, and the sentence to be imposed.

3 d) At the time of sentencing, provided that defendant
4 demonstrates an acceptance of responsibility for the offenses up
5 to and including the time of sentencing, recommend a two-level
6 reduction in the applicable Sentencing Guidelines offense level,
7 pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary,
8 move for an additional one-level reduction if available under
9 that section.

10 e) With respect to count one, recommend that
11 defendant be sentenced to a term of imprisonment no higher than
12 the low end of the agreed upon Sentencing Guidelines range.

13 6. The USAO further agrees:

14 a) Not to offer as evidence in its case-in-chief in
15 the above-captioned case or any other criminal prosecution that
16 may be brought against defendant by the USAO, or in connection
17 with any sentencing proceeding in any criminal case that may be
18 brought against defendant by the USAO, any Cooperation
19 Information. Defendant agrees, however, that the USAO may use
20 both Cooperation Information and Plea Information: (1) to obtain
21 and pursue leads to other evidence, which evidence may be used
22 for any purpose, including any criminal prosecution of defendant;
23 (2) to cross-examine defendant should defendant testify, or to
24 rebut any evidence offered, or argument or representation made,
25 by defendant, defendant's counsel, or a witness called by
26 defendant in any trial, sentencing hearing, or other court
27 proceeding; and (3) in any criminal prosecution of defendant for
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1 false statement, obstruction of justice, or perjury.

2 b) Not to use Cooperation Information against
3 defendant at sentencing for the purpose of determining the
4 applicable guideline range, including the appropriateness of an
5 upward departure, or the sentence to be imposed, and to recommend
6 to the Court that Cooperation Information not be used in
7 determining the applicable guideline range or the sentence to be
8 imposed. Defendant understands, however, that Cooperation
9 Information will be disclosed to the probation office and the
10 Court, and that the Court may use Cooperation Information for the
11 purposes set forth in U.S.S.G § 1B1.8(b) and for determining the
12 sentence to be imposed.

13 c) In connection with defendant's sentencing, to
14 bring to the Court's attention the nature and extent of
15 defendant's cooperation.

16 d) If the USAO determines, in its exclusive judgment,
17 that defendant has both complied with defendant's obligations
18 under paragraphs 2 and 3 above and provided substantial
19 assistance to law enforcement in the prosecution or investigation
20 of another ("substantial assistance"), to move the Court pursuant
21 to U.S.S.G. § 5K1.1 to fix an offense level and corresponding
22 guideline range below that otherwise dictated by the sentencing
23 guidelines, and to recommend a term of imprisonment within this
24 reduced range.

25 DEFENDANT'S UNDERSTANDINGS REGARDING COOPERATION

26 7. Defendant understands the following:

27 a) Any knowingly false or misleading statement by
28

1 defendant will subject defendant to prosecution for false
2 statement, obstruction of justice, and perjury and will
3 constitute a breach by defendant of this agreement.

4 b) Nothing in this agreement requires the USAO or any
5 other prosecuting, enforcement, administrative, or regulatory
6 authority to accept any cooperation or assistance that defendant
7 may offer, or to use it in any particular way.

8 c) Defendant cannot withdraw defendant's guilty plea
9 if the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1
10 for a reduced guideline range or if the USAO makes such a motion
11 and the Court does not grant it or if the Court grants such a
12 USAO motion but elects to sentence above the reduced range.

13 d) At this time the USAO makes no agreement or
14 representation as to whether any cooperation that defendant has
15 provided or intends to provide constitutes or will constitute
16 substantial assistance. The decision whether defendant has
17 provided substantial assistance will rest solely within the
18 exclusive judgment of the USAO.

19 e) The USAO's determination whether defendant has
20 provided substantial assistance will not depend in any way on
21 whether the government prevails at any trial or court hearing in
22 which defendant testifies or in which the government otherwise
23 presents information resulting from defendant's cooperation.

24 NATURE OF THE OFFENSE

25 8. Defendant understands that for defendant to be guilty of
26 the crime charged in count one, that is, CONSPIRACY TO COMMIT
27 HEALTH CARE FRAUD, in violation of Title 18, United States Code,
28 Section 1349, the following must be true: (1) There was an

1 agreement between two or more persons to commit the crime of
2 health care fraud, and (2) defendant became a member of the
3 conspiracy knowing of its object and intending to help accomplish
4 it.

5 PENALTIES AND RESTITUTION

6 9. Defendant understands that the statutory maximum
7 sentence that the Court can impose for a violation of Title 18,
8 United States Code, Section 1349, is: 10 years' imprisonment; a
9 3-year period of supervised release; a fine of \$250,000 or twice
10 the gross gain or gross loss resulting from the offense,
11 whichever is greatest; and a mandatory special assessment of
12 \$100.

13 10. Defendant understands, therefore, that the total
14 maximum sentence for all offenses to which defendant is pleading
15 guilty is: 10 years' imprisonment; a 3-year period of supervised
16 release; a fine of \$250,000 or twice the gross gain or gross loss
17 resulting from the offenses, whichever is greatest; and a
18 mandatory special assessment of \$100.

19 11. Defendant understands that supervised release is a
20 period of time following imprisonment during which defendant will
21 be subject to various restrictions and requirements. Defendant
22 understands that if defendant violates one or more of the
23 conditions of any supervised release imposed, defendant may be
24 returned to prison for all or part of the term of supervised
25 release authorized by statute for the offense that resulted in
26 the term of supervised release, which could result in defendant
27 serving a total term of imprisonment greater than the statutory
28 maximum stated above.

1 12. Defendant understands that, by pleading guilty,
2 defendant may be giving up valuable government benefits and
3 valuable civic rights, such as the right to vote, the right to
4 possess a firearm, the right to hold office, and the right to
5 serve on a jury. Defendant understands that once the court
6 accepts defendant's guilty plea, it will be a federal felony for
7 defendant to possess a firearm or ammunition. Defendant
8 understands that the conviction in this case may also subject
9 defendant to various other collateral consequences, including but
10 not limited to revocation of probation, parole, or supervised
11 release in another case and suspension or revocation of a
12 professional license. Defendant understands that unanticipated
13 collateral consequences will not serve as grounds to withdraw
14 defendant's guilty plea.

15 13. Defendant understands that, if defendant is not a
16 United States citizen, the felony conviction in this case may
17 subject defendant to: removal, also known as deportation, which
18 may, under some circumstances, be mandatory; denial of
19 citizenship; and denial of admission to the United States in the
20 future. The court cannot, and defendant's attorney also may not
21 be able to, advise defendant fully regarding the immigration
22 consequences of the felony conviction in this case. Defendant
23 understands that unexpected immigration consequences will not
24 serve as grounds to withdraw defendant's guilty plea.

25 14. Defendant understands that defendant will be required
26 to pay full restitution to the victim of the offense to which
27 defendant is pleading guilty. Defendant agrees that, in return
28 for the USAO's compliance with its obligations under this

1 agreement, the Court may order restitution to persons other than
2 the victim of the offenses to which defendant is pleading guilty
3 and in amounts greater than those alleged in the count to which
4 defendant is pleading guilty. In particular, defendant agrees
5 that the Court may order restitution to any victim of any of the
6 following for any losses suffered by that victim as a result: (a)
7 any relevant conduct, as defined in U.S.S.G. § 1B1.3, in
8 connection with the offense to which defendant is pleading
9 guilty; and (b) any counts dismissed pursuant to this agreement
10 as well as all relevant conduct, as defined in U.S.S.G. § 1B1.3,
11 in connection with those counts. The parties currently believe
12 that the applicable amount of restitution is approximately
13 \$978,818, but recognize and agree that this amount could change
14 based on facts that come to the attention of the parties prior to
15 sentencing.

16 FACTUAL BASIS

17 15. Defendant admits that defendant is, in fact, guilty of
18 the offense to which defendant is agreeing to plead guilty.
19 Defendant and the USAO agree to the statement of facts provided
20 below and agree that this statement of facts is sufficient to
21 support a plea of guilty to the charge described in this
22 agreement and to establish the Sentencing Guidelines factors set
23 forth in paragraph 17 below but is not meant to be a complete
24 recitation of all facts relevant to the underlying criminal
25 conduct or all facts known to either party that relate to that
26 conduct.

27 The defendant, Victoria N. Onyeabor ("defendant"), solely
28 owned Fendih Medical Supply, Inc. ("Fendih"), a supplier of

1 durable medical equipment ("DME") in the Los Angeles area that
2 specialized in the provision of power wheelchairs ("PWCs") and
3 related accessories to Medicare beneficiaries. Defendant
4 operated Fendih with the assistance of her husband, G. Onyeabor.

5 While running Fendih, defendant and G. Onyeabor paid, and
6 caused to be paid, kickbacks to Heidi Morishita ("Morishita"), a
7 "marketer" or "capper," for DME prescriptions for Medicare
8 beneficiaries, knowing that the DME was medically unnecessary.
9 Victoria Onyeabor and G. Onyeabor likewise paid, and caused to be
10 paid, kickbacks to Dr. Sri. J. Wijegenaratne ("Dr. J") for DME
11 prescriptions for Medicare beneficiaries, knowing that the DME
12 was medically unnecessary.

13 At the time defendant paid the kickbacks to Morishita and
14 Dr. J, defendant knew it was illegal to pay such remuneration for
15 the referral of Medicare patients and intended to violate the law
16 against such payments.

17 Once in possession of these bogus DME prescriptions,
18 defendant and G. Onyeabor delivered, and caused to be delivered,
19 the DME to Medicare beneficiaries, knowing the beneficiaries did
20 not need, and often times did not want, the DME.

21 Defendant, G. Onyeabor, and their co-conspirators, including
22 Morishita and Dr. J, knowingly caused Fendih to submit
23 approximately \$1,498,155 in false and fraudulent claims to
24 Medicare for various DME, primarily PWCs and related accessories,
25 provided to Medicare beneficiaries that were medically
26 unnecessary. Defendant did so with the intent to defraud
27 Medicare. As a result of these claims, Medicare paid Fendih a
28 total of \$978,818.

SENTENCING FACTORS

1
2
3 16. Defendant understands that in determining defendant's
4 sentence the Court is required to calculate the applicable
5 Sentencing Guidelines range and to consider that range, possible
6 departures under the Sentencing Guidelines, and the other
7 sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant
8 understands that the Sentencing Guidelines are advisory only,
9 that defendant cannot have any expectation of receiving a
10 sentence within the calculated Sentencing Guidelines range, and
11 that after considering the Sentencing Guidelines and the other §
12 3553(a) factors, the Court will be free to exercise its
13 discretion to impose any sentence it finds appropriate up to the
14 maximum set by statute for the crime[s] of conviction.

15 17. Defendant and the USAO agree to the following
16 applicable Sentencing Guidelines factors:

17 Base Offense Level : 6 U.S.S.G. § 2B1.1(a) (2)

18 Specific Offense
19 Characteristics:

20 Loss of more than : 16 U.S.S.G. § 2B1.1(b) (1) (I)
21 \$1,000,000

22 Aggravating Role : 2 U.S.S.G. § 3B1.1(C)

23 Abuse of position : 2 U.S.S.G. § 3B1.3
24 of trust

25 Total Offense Level : 26

26 Defendant and the USAO reserve the right to argue that additional
27 specific offense characteristics, adjustments, and departures
28 under the Sentencing Guidelines are appropriate.

18. Defendant understands that there is no agreement as to

1 defendant's criminal history or criminal history category.

2 19. Defendant and the USAO reserve the right to argue for a
3 sentence outside the sentencing range established by the
4 Sentencing Guidelines based on the factors set forth in 18 U.S.C.
5 § 3553(a)(1), (a)(2), (a)(3), (a)(6), and (a)(7).

6 WAIVER OF CONSTITUTIONAL RIGHTS

7 20. Defendant understands that by pleading guilty,
8 defendant gives up the following rights:

9 a) The right to persist in a plea of not guilty.

10 b) The right to a speedy and public trial by jury.

11 c) The right to be represented by counsel - and if
12 necessary have the court appoint counsel - at trial. Defendant
13 understands, however, that, defendant retains the right to be
14 represented by counsel - and if necessary have the court appoint
15 counsel - at every other stage of the proceeding.

16 d) The right to be presumed innocent and to have the
17 burden of proof placed on the government to prove defendant
18 guilty beyond a reasonable doubt.

19 e) The right to confront and cross-examine witnesses
20 against defendant.

21 f) The right to testify and to present evidence in
22 opposition to the charges, including the right to compel the
23 attendance of witnesses to testify.

24 g) The right not to be compelled to testify, and, if
25 defendant chose not to testify or present evidence, to have that
26 choice not be used against defendant.

27 h) Any and all rights to pursue any affirmative
28 defenses, Fourth Amendment or Fifth Amendment claims, and other

1 pretrial motions that have been filed or could be filed.

2 WAIVER OF APPEAL OF CONVICTION AND COLLATERAL ATTACK

3 21. Defendant understands that, with the exception of an
4 appeal based on a claim that defendant's guilty plea were
5 involuntary, by pleading guilty defendant is waiving and giving
6 up any right to appeal defendant's convictions on the offense to
7 which defendant is pleading guilty. Defendant gives up the right
8 to appeal all of the following: (a) the procedures and
9 calculations used to determine and impose any portion of the
10 sentence; (b) the term of imprisonment imposed by the Court,
11 provided it is within the statutory maximum; (c) the fine imposed
12 by the court, provided it is within the statutory maximum; (d) the
13 amount and terms of any restitution order, provided it requires
14 payment of no more than \$978,818; (e) the term of probation or
15 supervised release imposed by the Court, provided it is within
16 the statutory maximum; and (f) any of the following conditions of
17 probation or supervised release imposed by the Court: the
18 conditions set forth in General Orders 318, 01-05, and/or 05-02
19 of this Court; the drug testing conditions mandated by 18 U.S.C.
20 §§ 3563(a)(5) and 3583(d); [and] the alcohol and drug use
21 conditions authorized by 18 U.S.C. § 3563(b)(7); and any
22 conditions of probation or supervised release agreed to by
23 defendant in paragraph 2 above.

24 22. Defendant also gives up any right to bring a post-
25 conviction collateral attack on the conviction or sentence,
26 including any order of restitution, except a post-conviction
27 collateral attack based on a claim of ineffective assistance of
28 counsel, a claim of newly discovered evidence, or an explicitly

1 retroactive change in the applicable Sentencing Guidelines,
2 sentencing statutes, or statutes of conviction.

3 23. This agreement does not affect in any way the right of
4 the USAO to appeal the sentence imposed by the Court.

5 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

6 24. Defendant agrees that, provided the Court imposes a
7 total term of imprisonment within or below the range
8 corresponding to an offense level of 26 and the criminal history
9 category calculated by the Court, defendant gives up the right to
10 appeal all of the following: (a) the procedures and calculations
11 used to determine and impose any portion of the sentence; (b) the
12 term of imprisonment imposed by the Court; (c) the fine imposed
13 by the court, provided it is within the statutory maximum; (d)
14 the amount and terms of any restitution order, provided it
15 requires payment of no more than \$978,818; (e) the term of
16 probation or supervised release imposed by the Court, provided it
17 is within the statutory maximum; and (f) any of the following
18 conditions of probation or supervised release imposed by the
19 Court: the conditions set forth in General Orders 318, 01-05,
20 and/or 05-02 of this Court; the drug testing conditions mandated
21 by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug
22 use conditions authorized by 18 U.S.C. § 3563(b)(7).

23 25. The USAO agrees that, provided the Court imposes a term
24 of imprisonment within or above the range corresponding to an
25 offense level of 26 and the criminal history category calculated
26 by the Court, the USAO gives up its right to appeal any portion
27 of the sentence, with the exception that the USAO reserves the
28 right to appeal the amount of restitution ordered if that amount

1 is less than \$978,818.

2 RESULT OF WITHDRAWAL OF GUILTY PLEA

3 26. Defendant agrees that if, after entering a guilty plea
4 pursuant to this agreement, defendant seeks to withdraw and
5 succeeds in withdrawing defendant's guilty plea on any basis
6 other than a claim and finding that entry into this plea
7 agreement was involuntary, then (a) the USAO will be relieved of
8 all of its obligations under this agreement, including in
9 particular its obligations regarding the use of Cooperation
10 Information; (b) in any investigation, criminal prosecution, or
11 civil, administrative, or regulatory action, defendant agrees
12 that any Cooperation Information and any evidence derived from
13 any Cooperation Information shall be admissible against
14 defendant, and defendant will not assert, and hereby waives and
15 gives up, any claim under the United States Constitution, any
16 statute, or any federal rule, that any Cooperation Information or
17 any evidence derived from any Cooperation Information should be
18 suppressed or is inadmissible; and (c) should the USAO choose to
19 pursue any charge or any civil, administrative, or regulatory
20 action that was either dismissed or not filed as a result of this
21 agreement, then (i) any applicable statute of limitations will be
22 tolled between the date of defendant's signing of this agreement
23 and the filing commencing any such action; and (ii) defendant
24 waives and gives up all defenses based on the statute of
25 limitations, any claim of pre-indictment delay, or any speedy
26 trial claim with respect to any such action, except to the extent
27 that such defenses existed as of the date of defendant's signing
28 this agreement.

1 which defendant has pleaded guilty; (ii) will no longer be bound
2 by any agreements regarding criminal prosecution, and will be
3 free to criminally prosecute defendant for any crime, including
4 charges that the USAO would otherwise have been obligated to
5 dismiss pursuant to this agreement; and (iii) will no longer be
6 bound by any agreement regarding the use of Cooperation
7 Information and will be free to use any Cooperation Information
8 in any way in any investigation, criminal prosecution, or civil,
9 administrative, or regulatory action.

10 c) The USAO will be free to criminally prosecute
11 defendant for false statement, obstruction of justice, and
12 perjury based on any knowingly false or misleading statement by
13 defendant.

14 d) In any investigation, criminal prosecution, or
15 civil, administrative, or regulatory action: (i) defendant will
16 not assert, and hereby waives and gives up, any claim that any
17 Cooperation Information was obtained in violation of the Fifth
18 Amendment privilege against compelled self-incrimination; and
19 (ii) defendant agrees that any Cooperation Information and any
20 Plea Information, as well as any evidence derived from any
21 Cooperation Information or any Plea Information, shall be
22 admissible against defendant, and defendant will not assert, and
23 hereby waives and gives up, any claim under the United States
24 Constitution, any statute, Rule 410 of the Federal Rules of
25 Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure,
26 or any other federal rule, that any Cooperation Information, any
27 Plea Information, or any evidence derived from any Cooperation
28 Information or any Plea Information should be suppressed or is

1 inadmissible.

2 29. Following the Court's finding of a knowing breach of
3 this agreement by defendant, should the USAO choose to pursue any
4 charge or any civil, administrative, or regulatory action that
5 was either dismissed or not filed as a result of this agreement,
6 then:

7 a) Defendant agrees that any applicable statute of
8 limitations is tolled between the date of defendant's signing of
9 this agreement and the filing commencing any such action.

10 b) Defendant waives and gives up all defenses based on
11 the statute of limitations, any claim of pre-indictment delay, or
12 any speedy trial claim with respect to any such action, except to
13 the extent that such defenses existed as of the date of
14 defendant's signing this agreement.

15 COURT AND PROBATION OFFICE NOT PARTIES

16 30. Defendant understands that the Court and the United
17 States Probation Office are not parties to this agreement and
18 need not accept any of the USAO's sentencing recommendations or
19 the parties' agreements to facts or sentencing factors.

20 31. Defendant understands that both defendant and the USAO
21 are free to: (a) supplement the facts by supplying relevant
22 information to the United States Probation Office and the Court,
23 (b) correct any and all factual misstatements relating to the
24 Court's Sentencing Guidelines calculations and determination of
25 sentence, and (c) argue on appeal and collateral review that the
26 Court's Sentencing Guidelines calculations and the sentence it
27 chooses to impose are not error, although each party agrees to
28 maintain its view that the calculations in paragraph 19 are

1 consistent with the facts of this case. While this paragraph
2 permits both the USAO and defendant to submit full and complete
3 factual information to the United States Probation Office and the
4 Court, even if that factual information may be viewed as
5 inconsistent with the facts agreed to in this agreement, this
6 paragraph does not affect defendant's and the USAO's obligations
7 not to contest the facts agreed to in this agreement.

8 32. Defendant understands that even if the Court ignores
9 any sentencing recommendation, finds facts or reaches conclusions
10 different from those agreed to, and/or imposes any sentence up to
11 the maximum established by statute, defendant cannot, for that
12 reason, withdraw defendant's guilty plea, and defendant will
13 remain bound to fulfill all defendant's obligations under this
14 agreement. Defendant understands that no one -- not the
15 prosecutor, defendant's attorney, or the Court -- can make a
16 binding prediction or promise regarding the sentence defendant
17 will receive, except that it will be within the statutory
18 maximum.

19 NO ADDITIONAL AGREEMENTS

20 33. Defendant understands that, except as set forth herein,
21 there are no promises, understandings, or agreements between the
22 USAO and defendant or defendant's attorney, and that no
23 additional promise, understanding, or agreement may be entered
24 into unless in a writing signed by all parties or on the record
25 in court.

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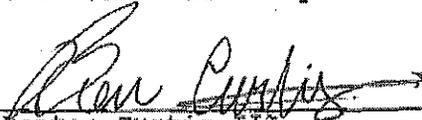
PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

34. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANDRÉ BIROTTE JR.
United States Attorney



O. Benton Curtis III
Assistant Chief
DOJ Criminal Fraud Section

11/06/12
Date



Victoria N. Onyeabor
Defendant

11/5/12
Date



Debra J. Rice
Attorney for Defendant
Victoria N. Onyeabor

11/5/12
Date

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CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.

Victoria N. Onyeabor
Victoria N. Onyeabor
Defendant

11/5/12
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CERTIFICATION OF DEFENDANT'S ATTORNEY

I am Victoria N. Onyeabor's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of her rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge; no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of [a] guilty plea(s) pursuant to this agreement.



Debra J. Rice
Attorney for Defendant
Victoria N. Onyeabor

11/5/12
Date

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES -- GENERAL

Case No. **CR-12-905-R**

Date: November 7, 2012

=====

PRESENT: HONORABLE MANUEL L. REAL, JUDGE

William Horrell
Courtroom Deputy

Sheri Kleeger
Court Reporter

Fred Medick
Ben Curtis
Asst. U.S. Attorney

=====

U.S.A. vs (Dft listed below)

Attorney for Defendant

1) VICTORIA N. ONYEABOR
X present X bond

1) Debra Rice
X present X retained

PROCEEDINGS: CHANGE OF PLEA

Court and counsel confer re: the change of plea.

Defendant moves to change her plea to count 1 of the Indictment.

Defendant is sworn. The Court questions the defendant regarding the offered plea of Guilty.

Defendant now enters new and different plea of Guilty to count 1 of the Indictment.

The Court finds a factual and legal basis for the plea; waivers of constitutional rights are freely, voluntarily and intelligently made. The plea is accepted and entered. The plea agreement is incorporated as part of the record.

THE COURT REFERS THE DEFENDANT TO THE PROBATION OFFICE FOR THE PREPARATION OF A PRESENTENCE REPORT AND CONTINUES THE MATTER TO FEBRUARY 4, 2013 AT 1:30 P.M. FOR SENTENCING.

15 min