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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
PAUL RICHARD RANDALL,  
  
Defendant.

No. SA CR 12-23-JLS

GOVERNMENT'S SENTENCING POSITION  
FOR DEFENDANT PAUL RANDALL

Plaintiff, by and through its attorney of record, the United States Attorney for the Central District of California, hereby files its position regarding the Presentence Report ("PSR") submitted by the United States Probation Office for defendant PAUL RICHARD RANDALL.



**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Defendant Paul Randall ("defendant") is before the Court for sentencing after having pleaded guilty to conspiracy to commit mail fraud. Defendant participated in a sophisticated "kickback" scheme where he paid physicians and other health care professionals to steer patient spinal surgeries to Tri-City Regional Medical Center ("Tri-City"). Tri-City was a participant in the conspiracy and funded the "kickbacks" by purchasing hardware from defendant based on what it knew to be inflated invoices. Tri-City invoiced the workers compensation carriers ("the carriers") for the hardware based on the inflated amount, and the carriers suffered substantial losses. The government does not have objections to the presentence report's ("PSR") Sentencing Guideline calculation. The government recommends the Court sentence defendant to 37 months' imprisonment and three years' supervised release. The government recommends the Court defer the restitution hearing in this matter for 60 days in order to ensure that there is an adequate record for the Court to determine whether to impose restitution and, if so, the amount owed to the carriers.

**II. FACTUAL BACKGROUND**

Defendant paid illegal kickbacks, ranging from \$15,000 to \$20,000 per surgery, to medical professionals in order to induce them to send their patients to Tri-City for spinal surgeries. See CR 4, Plea Agreement ¶ 14; PSR ¶¶ 10, 11. Defendant and Tri-City funded the "kickbacks" through a scheme where they inflated the true

1 cost of spinal surgery hardware and received payment from the  
2 carriers on the inflated amounts. (CR 4, Plea Agreement ¶ 14; PSR  
3 ¶ 13.) Specifically, defendant created and operated Summit Medical  
4 Group ("Summit"), where he purchased surgery hardware from a  
5 hardware manufacturer. (CR 4, Plea Agreement ¶ 14; PSR ¶ 13.)  
6 Summit billed Tri-City for the hardware at amounts well in excess of  
7 Summit's costs. (CR 4, Plea Agreement ¶ 14; PSR ¶¶ 13, 15.) Tri-  
8 City - knowing that defendant inflated the invoices in order to fund  
9 the payment of kickbacks - sought reimbursement from the carriers  
10 based on the inflated amounts. (CR 4, Plea Agreement ¶ 14; PSR ¶¶  
11 13, 14.) The carriers - unaware that defendant and Tri-City did not  
12 have an arm's length relationship and were, in fact, criminal  
13 partners in the kickback scheme - paid the inflated invoices. (CR  
14 4, Plea Agreement ¶ 14; PSR ¶ 13.) Tri-City kept five percent of  
15 the amount invoiced and passed the remaining proceeds to defendant,  
16 who used it to fund the kickbacks and personally profit. (CR 4,  
17 Plea Agreement ¶ 14; PSR ¶ 13.) While there is no evidence of a  
18 lack of medical necessity for the surgeries performed or that the  
19 hardware was defective, the carriers suffered millions of dollars in  
20 losses by paying well in excess of market value for the surgery  
21 hardware. (CR 4, Plea Agreement ¶ 14; PSR ¶ 18.)

22 Defendant's conduct was not limited to the kickback arrangement  
23 with Tri-City. In October 2010, defendant created a company called  
24 Platinum Medical ("Platinum"). (CR 4, Plea Agreement ¶ 14; PSR ¶  
25 16.) Platinum paid kickbacks to physicians for referring workers'  
26 compensation patients for toxicology tests. Platinum paid  
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28

1 physicians \$150 to \$200 for each test performed, which was in  
 2 addition to the professional component of the test that the  
 3 physician would bill to workers' compensation  
 4 insurance. (CR 4, Plea Agreement ¶ 14; PSR ¶ 17.) Platinum  
 5 concealed the kickback by purchasing accounts receivables from the  
 6 physicians for worthless toxicology claims. (CR 4, Plea Agreement  
 7 ¶ 14; PSR ¶ 17.)

### 8 **III. THE PRESENTECE REPORT**

#### 9 **A. The PSR**

10 On February 19, 2016, the United States Probation Office  
 11 ("USPO") disclosed to the parties its PSR in this matter. See CR  
 12 60. The USPO found that defendant was subject to the following  
 13 Sentencing Guidelines calculations:

14	Base offense level:	6	(U.S.S.G. § 2B1.1(a)(1))
15	Loss Increase:	16	(U.S.S.G. § 2B1.1(b)(1)(I))
16	Acceptance:	-2	(U.S.S.G. § 3E1.1(a))
17	Acceptance:	-1	(U.S.S.G. § 3E1.1(b))
18	Total Offense Level:	19	

19 PSR ¶¶ 24-35.

20 Defendant has six criminal history points, which places him in  
 21 criminal history category III. See PSR ¶ 46. Both prior felony  
 22 convictions involve fraud. See PSR ¶ 42-43. Based on an offense  
 23 level of 19 and a criminal history category of III, the USPO found  
 24 that defendant's sentencing range is 37-46 months' imprisonment.  
 25 See PSR ¶ 83. The PSR did not recommend the imposition of  
 26 restitution, as the FBI case agent's and the government, at the

1 time, represented that determining the amount of restitution owed  
2 was too difficult given the circumstances of the offense and the  
3 inability to determine which procedures involved kickbacks.

4 B. There are no objections to the PSR

5 The government has no objections to the facts in the PSR or the  
6 USPO's Sentencing Guidelines calculations. Because of a change in  
7 the Sentencing Guidelines, the PSR offense level is two levels lower  
8 than the offense level contemplated in the parties' plea agreement.  
9 Compare PSR ¶ 25 and CR 4, Plea Agreement ¶ 16. The government  
10 requests the Court adopt the PSR's application of a 16-level  
11 increase for loss rather than the 18-level increase contemplated in  
12 the plea agreement because defendant should be sentenced under the  
13 current version of the Guidelines. See e.g. United States v.  
14 Warren, 980 F.2d 1300, 1304 (9th Cir.1992) (district court normally  
15 must apply the version of the Sentencing Guidelines in effect on the  
16 date of sentencing).

17 Restitution should be imposed when (1) sentencing a defendant  
18 convicted of "an offense against property under [Title 18],  
19 including any offense committed by fraud or deceit"; and (2) there  
20 is "an identifiable victim or victims [who] suffered ... pecuniary  
21 loss." 18 U.S.C. § 3663A(a)(1), (c)(1). The Court can decline to  
22 impose restitution if it finds in the case of restitution involving  
23 lost property that complex issues of fact relating to the amount of  
24 the victim's losses would complicate the sentencing process. 18  
25 U.S.C. § 3663A(c)(3)(B). The government does not believe that the  
26 government has adequately developed the record to support this  
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1 finding. Further investigative efforts by the government and  
2 consultation with the victim carriers is required. Defendant  
3 admitted that he inflated invoices to fund the kickback scheme -  
4 which caused the carriers to pay well in excess of market value for  
5 the hardware. The government's investigation into the restitution  
6 issue reveals that, according to defendant's own records seized  
7 during search warrants, carriers paid Summit over \$4 million dollars  
8 for hardware. Had the carriers known that defendant and Tri-City  
9 were criminal partners and inflated the invoices in order to fund  
10 the kickbacks, they would not have paid the inflated invoices. At a  
11 minimum, the carriers are due any amount that they paid for hardware  
12 in excess of market value of the hardware. The government requests  
13 the Court set the restitution hearing over for 60 days pursuant to  
14 18 U.S.C. § 3664(d) (5), which permits restitution to be deferred  
15 for 90 days. See Dolan v. United States, 560 U.S. 605, 608 (2010)  
16 ("We hold that a sentencing court that misses the 90 day deadline  
17 nonetheless retains the power to order restitution - at least where,  
18 as here, the sentencing court made clear prior to the deadline's  
19 expiration that it would order restitution, leaving open (for more  
20 than 90 days) only the amount."). Thirty days prior to the hearing  
21 date, the government will file additional information relating to  
22 losses suffered and evidence to support those losses.

23 **IV. THE COURT SHOULD SENTENCE DEFENDANT TO 37 MONTHS' IMPRISONMENT**

24 The Court should sentence defendant to 37 months' imprisonment.  
25 Defendant engaged in serious conduct. He participated in a  
26 sophisticated kickback scheme where he paid millions of dollars in  
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1 kickbacks to medical professionals in order to induce the medical  
2 professionals to cause their patients to undergo surgery at Tri-  
3 City. Defendant's conduct did not involve a momentary lapse in  
4 judgment, but instead revealed a pattern of criminal acts over a 19-  
5 month period. While there is no evidence that unnecessary surgeries  
6 were performed here, patients - especially those who are undergoing  
7 potentially life altering medical procedures - are entitled to  
8 conflict-free advice from their physicians about whether to have  
9 surgery and, if so, the best hospital for the surgery. See e.g.  
10 United States v. Nayak, 769 F.3d 978, 984 (7th Cir. 2014)("Indeed,  
11 the intangible harm from a fraud can often be quite substantial,  
12 especially in the context of the doctor-patient relationship, where  
13 patients depend on their doctor - more or less completely - to  
14 provide them with honest medical services in their best interest.")  
15 Defendant, Tri-City, and participating physicians put their quest  
16 for personal profits above their duty to ensure the patients  
17 received conflict-free advice. Moreover, especially troubling,  
18 defendant funded the illegal kickbacks by cheating the carriers. In  
19 short, money paid into the carrier's compensation fund, which is for  
20 the treatment of injured employees, was diverted to pay kickbacks  
21 aimed at enriching defendant and Tri-City. The sentence needs to  
22 reflect the seriousness of the conduct and the harm that defendant  
23 caused. The Court's sentence must deter others in the medical  
24 industry from participating in kickbacks and the recommended  
25 sentence does so. Given his history, defendant is also in need of  
26 specific deterrence. Defendant has twice been sentenced to prison



1 for participating in fraud. Despite sentences of 21 months and 18  
2 months, defendant engaged in new criminal conduct. For these  
3 reasons, the Court should sentence defendant to 37 months'  
4 imprisonment.