

U.S. v. VIP Healthcare Solutions, Inc., 23-058(RAM)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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U.S. DISTRICT COURT
SAN JUAN, P.R.



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UNITED STATES OF AMERICA,
Plaintiff,

v.

CRIMINAL NO. 23-058(RAM)

VIP HEALTHCARE SOLUTIONS, INC.,
Defendant.

PLEA AGREEMENT

TO THE HONORABLE COURT:

The United States of America, Defendant VIP Healthcare Solutions, Inc., and Defendant's counsel, Kendys Pimentel Soto, Esq., pursuant to Federal Rule of Criminal Procedure 11, state that they have reached a Plea Agreement, the terms and conditions of which are as follows:

1. Charges to which Defendant will Plead Guilty

Defendant agrees to plead guilty to Count Forty-Six of the Indictment:

Count Forty-Six: On or about the date set forth below, in the District of Puerto Rico and within the jurisdiction of this Court, the defendants, [3] **VIP HEALTHCARE SOLUTIONS, INC.** knowingly made a false statement for the purpose of influencing the action of a federally insured financial institution as defined in 18 U.S.C. § 20, in connection with a Paycheck Protection Program loan application, when in truth and in fact, as the defendant well knew it was false, as follows:

| COUNT | DATE | DOCUMENT | FALSE STATEMENT |
|-------|---------------|---------------------------|--|
| 46 | April 7, 2020 | Borrower Application Form | Defendants falsely certified that "the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects." |

All in violation of Title 18, United States Code, Section 1014.

2. Maximum Penalties

The maximum statutory penalty for an organizational defendant as to the offenses charged in Count Forty-Six of the Indictment, is five (5) years of probation pursuant to 18 U.S.C. § 3561, and a fine of not more than \$1,000,000.00 pursuant to 18 U.S.C. § 1014.

3. Sentencing Guidelines Applicability

Defendant understands that the sentence will be imposed by the Court in accordance with 18 U.S.C. §§ 3551-86, and the United States Sentencing Guidelines (hereinafter "Guidelines"), which are advisory pursuant to the United States Supreme Court decision in *United States v. Booker*, 543 U.S. 220 (2005).

4. Special Monetary Assessment

Defendant agrees to pay a special monetary assessment ("SMA") of four hundred dollars (\$400.00) per count of conviction. The SMA will be deposited, prior to sentencing, in the Crime Victim Fund, pursuant to 18 U.S.C. § 3013 (a)(2)(A).

5. Fines and Restitution

The Court may, pursuant to Section 5E1.2 of the Guidelines order Defendant to pay a fine. The Court may also impose restitution. Defendant agrees to execute and make available, prior to sentencing, a standardized financial statement (OBD Form 500). The United States will advocate on behalf of any identified victim, and comply with its obligations under the Mandatory Victim Restitution Act of 1996.

6. Sentence to be Determined by the Court


Defendant understands that the sentence to be imposed will be determined solely by the United States District Judge. The United States cannot make and has not made any promise or

representation as to what sentence Defendant will receive. Any discussions that the parties might have had about possible sentences are not binding in any way on the Court, and do not constitute representations about what the parties will seek, or what the actual sentence will be.


7. Recommended Sentencing Guidelines Calculations

After due consideration of the relevant factors enumerated in 18 U.S.C. § 3553(a), the United States and Defendant submit that the advisory Guidelines calculations listed below apply to Defendant. However, Defendant acknowledges that the Court is not required to accept those recommended Guidelines calculations.

- A. The parties agree that U.S.S.G. §§ 8C2.2 through 8C2.9 apply to the offense of conviction. Nonetheless, consistent with the provisions of 18 U.S.C. §§ 3553 and 3572, the parties agree to request that Defendant be sentenced to two years of probation and a monetary fine.



8. Waiver of Appeal



Defendant knowingly and voluntarily waives the right to appeal the conviction and any aspect of this case's judgment and any sentence within the statutory maximum (or the manner in which the sentence was determined) on the grounds set forth in 18 U.S.C. § 3572 or any ground whatsoever, in exchange for the concessions made by the United States in this Plea Agreement.

9. No Further Adjustments or Departures

The United States and Defendant agree that no further adjustments or departures to Defendant's total adjusted base offense level and no variant sentence under 18 U.S.C. § 3553—other than any explicitly provided for in this Plea Agreement—shall be sought by Defendant. The parties agree that any request by Defendant for an adjustment or departure that is not explicitly provided for in this Plea Agreement will be considered a material breach of this Plea


Agreement, and the United States will be free to ask for any sentence, either guideline or statutory.

10. Satisfaction with Counsel

Defendant is satisfied with counsel, Kendys Pimentel Soto, Esq., and asserts that counsel have rendered effective legal assistance.

11. Rights Surrendered by Defendant Through Guilty Plea

Defendant understands that by entering into this Plea Agreement, Defendant surrenders and waives certain rights as detailed in this agreement. Defendant understands that the rights of criminal defendants include the following:

- 
- a. If Defendant had persisted in a plea of not guilty to the charges, Defendant would have had the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States and the judge agree.
 - b. If a jury trial is conducted, the jury would be composed of twelve lay persons selected at random. Defendant and Defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury would have to agree, unanimously, before it could return a verdict of either guilty or not guilty. The jury would be instructed that Defendant is presumed innocent, that it could not convict Defendant unless, after hearing all the evidence, it was persuaded of Defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately.
 - c. If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established Defendant's guilt beyond a reasonable doubt.
 - d. At a trial, the United States would be required to present its witnesses and other evidence against Defendant. Defendant would be able to confront those witnesses and Defendant's attorney would be able to cross-examine them. In turn, Defendant could present witnesses and other evidence on Defendant's own behalf. If the witnesses for Defendant would not appear voluntarily, Defendant could require their attendance through the subpoena power of the Court.

- c. At a trial, Defendant could rely on the privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from Defendant's refusal to testify. If Defendant desired to do so, Defendant could testify on Defendant's own behalf.

12. Stipulation of Facts

The accompanying Stipulation of Facts signed by Defendant is hereby incorporated into this Plea Agreement. Defendant adopts the Stipulation of Facts and agrees that the facts therein are accurate in every respect. Defendant agrees and accepts that had the matter proceeded to trial, the United States would have proven those facts beyond a reasonable doubt.

13. Limitations of Plea Agreement

This Plea Agreement binds only the United States Attorney's Office for the District of Puerto Rico and Defendant. It does not bind any other federal district, state, or local authorities.

14. Entirety of Plea Agreement

This written agreement constitutes the complete Plea Agreement between the United States, Defendant, and Defendant's counsel. The United States has made no promises or representations except as set forth in writing in this Plea Agreement and denies the existence of any other terms and conditions not stated herein.

15. Amendments to Plea Agreement

No other promises, terms or conditions will be entered into between the parties unless they are in writing and signed by all parties.

16. Dismissal of Remaining Counts

At sentencing should there be any pending counts and should the Defendant comply with the terms of this Plea Agreement, the United States will move to dismiss the remaining counts of the Indictment pending against Defendant in this case.



17. Voluntariness of Plea Agreement

Defendant acknowledges that no threats have been made against Defendant and that Defendant is pleading guilty freely and voluntarily because Defendant is guilty.

18. Breach and Waiver

Defendant agrees that defendant will have breached this Plea Agreement if, after entering into this Plea Agreement, Defendant: (a) fails to perform or to fulfill completely each and every one of Defendant's obligations under this Plea Agreement; (b) engages in any criminal activity prior to sentencing; or (c) attempts to withdraw Defendant's guilty plea. In the event of such a breach, the United States will be free from its obligation under this Plea Agreement and Defendant will not have the right to withdraw the guilty plea. Moreover, Defendant agrees that if Defendant is in breach of the Plea Agreement, Defendant is deemed to have waived any objection to the reinstatement of any charges under the Indictment, Information, or complaint which may have previously been dismissed or which may have not been previously prosecuted.

19. Payment of Monetary Penalties




Defendant understands and agrees that pursuant to 18 U.S.C. §§ 3616 and 3572, all monetary penalties imposed by the Court will be due immediately and subject to immediate enforcement by the United States. Within 14 days of a request, Defendant agrees to provide all of Defendant's financial information (including, for example, balance sheets and account statements) to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination and/or complete financial statement under penalty of perjury. If the Court imposes a schedule of payments, Defendant understands that the schedule of payments 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 judgement. Until all monetary penalties are paid in full, Defendant agrees to be referred to the Treasury Offset Program, so that any federal payment or transfer or returned property to Defendant will be offset and applied to pay Defendant's

unpaid monetary penalties. Defendant agrees to make good-faith efforts towards payment of all monetary penalties imposed by the Court.

20. Corporate Authorization

Defendant states that it is authorized to enter into this agreement. Before the date that this Plea Agreement is signed, Defendant's representative shall provide the United States a written statement in the form of a corporate resolution certifying that Defendant is authorized to enter into and comply with all the terms of this agreement. The corporate resolution shall certify that all corporate formalities for such authorizations have been observed. The resolution shall further certify that Carla Carrillo Torres, Secretary and Treasurer of defendant VIP Healthcare Solutions, Inc., is authorized to take these actions. Defendant further agrees that Carla Carrillo Torres shall appear on behalf of Defendant to enter the guilty plea and for imposition of the sentence in the United States District Court for the District of Puerto Rico.

21. Organizational Changes



The defendant shall not, through a change of name, business reorganization, sale or purchase of assets, divestiture of assets, or any similar action, seek to avoid the obligations and conditions set forth in this Plea Agreement. This Plea Agreement, together with all of the obligations and terms hereof, shall inure to the benefit of and bind partners, assignees, successors-in-interest, or transferees of the defendant.

22. Package Plea Provision


Defendant is fully aware that this is a package plea agreement, that is, a Plea Agreement conditioned upon the guilty plea of all co-defendants. Defendant certifies that Defendant is not entering into this guilty plea because of threats or pressures from any co-defendant. Pursuant to *United States v. Martinez-Molina*, 64 F.3d 719 (1st Cir. 1995), package plea agreements require that the District Court be alerted to the fact that co-defendants are entering a package deal so that

the District Court can carefully ascertain the voluntariness of each defendant's plea. The parties further agree that should any of the co-defendants withdraw the guilty plea, the United States reserves its right to withdraw from its obligations under the package plea agreement in its entirety.

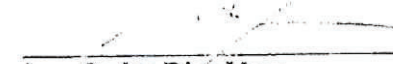
W. STEPHEN MULDROW
United States Attorney

SETH ERBE Digitally signed by SETH ERBE
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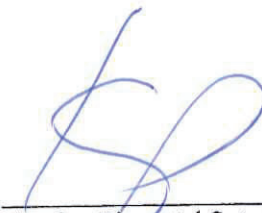
Seth Erbe
Assistant U.S. Attorney
Chief, Financial Fraud Public Corruption
Dated: _____



Jose Capo Iriarte
Special Assistant U.S. Attorney
Dated: 10/3/23



Jose Carlos Diaz Vega
Special Assistant U.S. Attorney
Dated: 10/3/23



Kendys Pimentel Soto, Esq.
Counsel for Defendant
Dated: 10/17/23




VIP Healthcare Solutions, Inc.
Defendant
By: Carla Carrillo Torres
Dated: 10/17/23

UNDERSTANDING OF RIGHTS

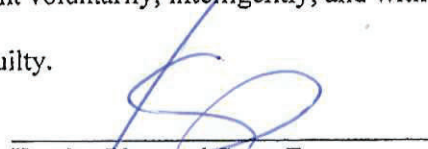
I have consulted with counsel and fully understand all of my rights as to the charges pending against me. Further, I have consulted with my attorney and fully understand my rights as to the provisions of the Guidelines that may apply in my case. I have read this Plea Agreement and carefully reviewed every part of it with my attorney. My counsel has translated the Plea Agreement to me in the Spanish language and I have no doubts as to the contents of the agreement. I fully understand this agreement and voluntarily agree to it.

Dated: 10/12/23 10/17/23



VIP Healthcare Solutions, Inc.
Defendant
By: Carla Carrillo Torres

I am the attorney for Defendant. I have fully explained Defendant's rights to Defendant with respect to the pending charges. Further, I have reviewed the applicable provisions of the Guidelines and I have fully explained to Defendant the provisions of those Guidelines that may apply in this case. I have carefully reviewed every part of this Plea Agreement with Defendant. I have translated the Plea Agreement and explained it in the Spanish language to the Defendant who has expressed having no doubts as to the contents of the agreement. To my knowledge, Defendant is entering into this Plea Agreement voluntarily, intelligently, and with full knowledge of all consequences of Defendant's plea of guilty.



Kendys Pimentel Soto, Esq.
Counsel for Defendant
Dated: 10/17/23

STIPULATION OF FACTS

In conjunction with the submission of the accompanying Plea Agreement in this case, the defendant VIP Healthcare Solution, Inc. (VIP), expressly states that it is guilty as charged in Counts Forty-Six and ~~Forty Seven~~ of the Indictment and admits the following:

The Paycheck Protection Program ("PPP") was a COVID-19 pandemic relief program administered by the Small Business Administration ("SBA") that provided forgivable loans to small businesses for job retention and certain other expenses. The PPP permitted participating third-party lenders to approve and disburse SBA-backed PPP loans to cover payroll, fixed debts, utilities, rent/mortgage, accounts payable and other bills incurred by qualifying businesses during, and resulting from, the COVID-19 pandemic.

To obtain a PPP loan, a qualifying business had to submit a PPP loan application to an SBA participating lender, which was signed by an authorized representative of the business. The PPP loan application required the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications to be eligible to obtain the PPP loan.


As part of the PPP loan application, the business (through its authorized representative) had to disclose, among other things, the following:

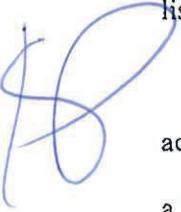
- a. All owners of 20% or more of the equity of the applicant business,
- b. If any owner of the applicant business was involved in any bankruptcy,
- c. If any owner of the applicant business was an owner of any other business or had any common management with any other business.

As further part of the PPP loan application, the business (through its authorized representative) had to certify, among other things, the following:

- a. That economic uncertainty at the time of application made the loan request necessary to support the operations of the business,
- b. That the funds would be used to retain workers and maintain payroll,
- c. That the information provided in the application and the information provided in all supporting documents and forms was true and accurate in all material respects and that it understood that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including "... if submitted to a federally insured institution, under 18 USC 1014".

On or about April 7, 2020, defendant VIP submitted a PPP Loan Application for \$249,755.35. The application was submitted through Oriental Bank, a third-party participating lender in the PPP and a federally insured financial institution as defined in 18 U.S.C. § 20. The application was approved, and the funds were disbursed on April 28, 2020.

 In the application, defendant VIP, provided false information, including, but not limited to, falsely claiming that co-defendant Carla Carrillo Torres owned 85% of VIP while failing to list additional owners of VIP.

 Defendant VIP knowingly made false statements for the purpose of influencing the action of a federally insured financial institution as defined in 18 U.S.C. § 20, in connection with a Paycheck Protection Program loan application while falsely certifying that the information provided in the applications and the information provided in all supporting documents and forms was true and accurate in all material respects.


Had this matter proceeded to trial, the United States would have presented evidence through the testimony of witnesses as well as physical evidence and documentary evidence, which would have proven beyond a reasonable doubt Defendant's guilt.

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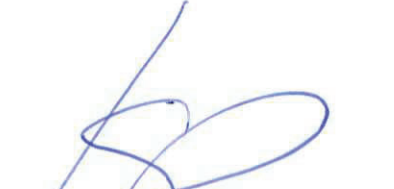
At trial, the United States would have proven beyond a reasonable doubt that defendant VIP is guilty as charged in Count Forty-Six of the Indictment. Discovery was timely made available to Defendant for review.




Jose Capo Priarte
Special Assistant U.S. Attorney
Dated: 10/3/23



Jose Carlos Diaz Vega
Special Assistant U.S. Attorney
Dated: 10/3/23



Kendys Pimentel Soto, Esq.
Counsel for Defendant
Dated: 10/17/23



VIP Healthcare Solutions, Inc.
Defendant
By: Carla Carrillo Torres
Dated: 10/17/23