



U.S. Department of Justice

Michael J. Sullivan
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

March 26, 2009

09 CG 10035 DPW

Paul R. Cirel
Jennifer M. Ryan.
Dwyer & Collora
600 Atlantic Ave.
Boston, MA 02210

Re: Shane Doyle

Dear Counsel:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Shane Doyle ("Defendant"), in the above-captioned case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, Defendant shall waive indictment and shall plead guilty to the Information attached hereto as Exhibit A. The Information charges one count of misbranding a medical device in violation of 21 U.S.C. §§331(a) and 333(a)(2). Defendant expressly and unequivocally admits that he committed the crime charged in the Information; did so knowingly, intentionally or willfully; and is in fact guilty of that offense. Defendant also agrees to waive venue, any applicable statutes of limitations, and any legal or procedural defects in the Information

2. Penalties

Defendant faces the following maximum penalties: imprisonment for 3 years, \$250,000 fine, supervised release for one year, and a mandatory special assessment of \$100.

3. Sentencing Guidelines

The sentence to be imposed upon Defendant is within the discretion of the sentencing court, subject to the statutory and maximum penalties set forth above, and the provisions of the Sentencing Reform Act, and the United States Sentencing Guidelines promulgated thereunder. The Sentencing

Guidelines are advisory, not mandatory and, as a result, the Court may impose a sentence up to and including the statutory maximum term of imprisonment and statutory maximum fine. In imposing the sentence, the Court must consult and take into account the Sentencing Guidelines, along with the other factors set forth in 18 U.S.C. §3553(a).

The parties will take the following positions at sentencing with respect to the application of the Sentencing Guidelines:

- (a) The base offense level is 6 pursuant to U.S.S.G. §2N2.1(a).
- (b) An increase of 4 levels is warranted based on a loss of between \$10,000 and \$30,000, pursuant to U.S.S.G. §§2N2.1(c)(1) and 2B1.1(b)(1)(C).
- (c) An increase to level 14 is warranted because the offense involved the reckless risk of bodily harm, pursuant to U.S.S.G. §2B1.1(b)(13).

The U.S. Attorney and Defendant agree that there is no basis for a departure from the Sentencing Guidelines or for a sentence outside the Guidelines under the factors set forth in 18 U.S.C. § 3553(a). Accordingly, neither the U.S. Attorney nor Defendant will seek a departure from the Sentencing Guidelines or a sentence outside the Guidelines, except as explicitly reserved below in the Cooperation section of this Agreement.

Based on Defendant's prompt acceptance of personal responsibility for the offense of conviction in this case, and information known to the U.S. Attorney at this time, the U.S. Attorney agrees to recommend that the Court reduce by two levels Defendant's Adjusted Offense Level under U.S.S.G. §3E1.1.

The U.S. Attorney specifically reserves the right not to recommend a reduction under U.S.S.G. §3E1.1 if, at any time between his execution of this Agreement and sentencing Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit his conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under U.S.S.G. §1B1.3;
- (d) Fails to provide truthful information about his financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under U.S.S.G. §1B1.3;
- (f) Engages in acts which form a basis for finding that Defendant has obstructed

or impeded the administration of justice under U.S.S.G. §3C1.1;

- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Agreement; and/or
- (j) Attempts to withdraw his guilty plea.

Defendant expressly understands that he may not withdraw his plea of guilty if, for any of the reasons listed above, the U.S. Attorney does not recommend that he receive a reduction in Offense Level for acceptance of responsibility.

Defendant expressly understands that, in addition to declining to recommend an acceptance-of-responsibility adjustment, the U.S. Attorney may seek an upward adjustment pursuant to U.S.S.G. §3C1.1 if Defendant obstructs justice after date of this Agreement.

4. Sentence Recommendation

In the event the U.S. Attorney does not file a motion under U.S.S.G. §5K1.1, the U.S. Attorney agrees to recommend the following sentence before the District Court:

- (a) Incarceration or other confinement at the low end of the applicable guideline range;
- (b) Fine of \$10,000;
- (c) Mandatory special assessment; and
- (d) Supervised release at the low end of the applicable guideline and statutory range.

Defendant agrees to recommend the same sentence.

Defendant agrees that he will provide to the U.S. Attorney expert reports, motions, memoranda of law and documentation of any kind on which he intends to rely at sentencing not later than twenty-one days before sentencing. Any basis for sentencing with respect to which all expert reports, motions, memoranda of law and documentation have not been provided to the U.S. Attorney at least twenty-one days before sentencing shall be deemed waived.

In the event of an appeal from, or collateral challenge to, Defendant's sentence, the U.S. Attorney reserves his right to argue the correctness of Defendant's sentence and the manner in which the District Court determines it.

5. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing.

6. Cooperation

a. Terms of Cooperation

Defendant agrees to cooperate fully with law enforcement agents and government attorneys. He must provide complete and truthful information to all law enforcement personnel. If his testimony is requested, he must testify truthfully and completely before any grand jury, and at any hearing and trial. Defendant must answer all questions put to him by any law enforcement agents or government attorneys and must not withhold any information. He must not attempt to protect any person or entity through false information or omission, or to implicate falsely any person or entity. Upon request, he must furnish all documents, objects and other evidence in his possession, custody or control that are relevant to the government's inquiries.

Defendant understands that he has a right to have counsel present when communicating with representatives of the government concerning the criminal conduct with which he has been charged. To facilitate his cooperation, Defendant hereby knowingly and voluntarily waives this right with respect to all debriefings by law enforcement agents and government attorneys and all appearances to testify. This waiver may be revoked at any time by a specific request by Defendant or his counsel without otherwise affecting the terms or enforceability of this Agreement.

To enable the Court to have the benefit of all relevant sentencing information, Defendant waives any rights he may have to prompt sentencing and will join in any requests by the U.S. Attorney that sentencing be postponed until Defendant's cooperation is complete. Defendant understands that the date of Defendant's sentencing is within the sole discretion of the Court and that this Agreement may require Defendant's cooperation to continue even after Defendant has been sentenced. Defendant's failure to continue to cooperate pursuant to the terms of this Agreement after sentence is imposed shall constitute a breach of this Agreement by Defendant.

b. Substantial Assistance Motion

In the event that Defendant provides substantial assistance in the investigation or prosecution of another person who has committed a criminal offense, the U.S. Attorney agrees that, at or before the time of sentencing, he will file a motion under U.S.S.G. §5K1.1 to allow the Court to impose a sentence below the applicable Guideline Sentencing Range.

The determination whether Defendant has provided substantial assistance rests solely in the discretion of the U.S. Attorney and is not subject to appeal or review. The U.S. Attorney expressly reserves the right to decline to file a motion pursuant to U.S.S.G. §5K1.1 if Defendant violates any

condition of his pretrial release, violates any of the requirements of honesty and candor detailed in paragraph 6 a. above, or engages in any criminal conduct after the date he signs this Agreement. Defendant may not withdraw his plea if the U.S. Attorney determines that Defendant has not rendered substantial assistance, or if the Court refuses to grant the U.S. Attorney's motion for a downward departure.

c. Sentence Recommendation with Substantial Assistance

If Defendant provides substantial assistance, subject to all the provisions of paragraphs 6. a. and 6. b. above, the U.S. Attorney will advise the sentencing judge of the full nature, extent and value of the assistance provided by Defendant. The U.S. Attorney reserves the right to recommend a particular sentence or sentencing range, or to make no recommendation at Defendant's sentencing.

d. Letter Immunity

In return for Defendant's full and truthful cooperation, the U.S. Attorney agrees not to use any information provided by Defendant pursuant to this Agreement (or any information directly or indirectly derived therefrom) against Defendant in any criminal case except in a prosecution (1) for perjury or obstruction of justice, or for making a false statement after the date of this Agreement; or (2) for an act of physical violence against the person of another, or conspiracy to commit any such act of violence. The U.S. Attorney reserves the right to respond fully and completely to all requests for information by the District Court and U.S. Probation Office in this case. All such disclosures, however, shall be made subject to the provisions constraining the use of this information by the District Court and U.S. Probation Office contained in U.S.S.G. §1B1.8(a) and the commentary thereto. Notwithstanding the provisions of U.S.S.G. §1B1.8(b)(5) and the commentary thereto, the U.S. Attorney agrees to take the position that at the time of sentencing information provided by Defendant pursuant to this Agreement should not be used either in determining where within the applicable guideline range to sentence Defendant or in determining whether, or to what extent, a departure from the Sentencing Guidelines is warranted.

If the U.S. Attorney determines that Defendant has breached this Agreement by making any false, incomplete or misleading statement, or by providing any false, incomplete or misleading information to any law enforcement personnel, grand jury or court, the U.S. Attorney may terminate this Agreement as set forth below, and may also prosecute Defendant for any and all offenses that could be charged against him in the District of Massachusetts, including, but not limited to, false statements and perjury.

7. Court Not Bound by Agreement

The sentencing recommendations made by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the U.S. Probation Office or the sentencing judge. Within the maximum sentence which Defendant faces under the applicable law, the sentence to be imposed is within the sole discretion of the sentencing judge. Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(B). Defendant may not withdraw his plea of guilty regardless

of what sentence is imposed. Nor may Defendant withdraw his plea because the U.S. Probation Office or the sentencing judge declines to follow the Sentencing Guidelines calculations or recommendations of the parties. In the event that the sentencing judge declines to follow the Sentencing Guidelines calculations or recommendations of the U.S. Attorney, the U.S. Attorney reserves the right to defend the sentencing judge's calculations and sentence in any subsequent appeal or collateral challenge.

8. Civil Liability

By entering into this Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability, which Defendant may have incurred or may incur as a result of his conduct and his plea of guilty to the charge specified in paragraph 1 of this Agreement.

Defendant's civil liability arising out of conduct separate and distinct from his plea of guilty to the charge specified in paragraph 1 of the Agreement is the subject of a separate agreement, which is attached hereto as Exhibit B.

9. Rejection of Plea by Court

Should Defendant's guilty plea not be accepted by the Court for whatever reason, or later be withdrawn on motion of Defendant, this Agreement shall be null and void at the option of the U.S. Attorney.

10. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Agreement, has violated any condition of his pretrial release, or has committed any crime following his execution of this Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, irrespective of whether he elects to be released from his commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that no such breach by him of an obligation under this Agreement shall give rise to grounds for withdrawal of his guilty plea. Defendant understands that, should he breach any provision of this agreement, the U.S. Attorney will have the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which may be made by him, and any information, materials, documents or objects which may be provided by him to the government subsequent to this Agreement, without any limitation. In this regard, Defendant hereby waives any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act.

11. Who Is Bound By Agreement

11. Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

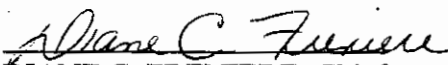
12. Complete Agreement

This letter contains the complete agreement between the parties. No promises, representations or agreements have been made other than those set forth in this letter. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the Agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Jeremy M. Sternberg.

Very truly yours,

MICHAEL J. SULLIVAN
United States Attorney

By: 
DIANE C. FRENIERE, Chief
White Collar Crime Section


ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty and I believe this Agreement is in my best interest.


Shane Doyle
Defendant

Date: 4/1/09

I certify that Shane Doyle has read this Agreement and that we have discussed its meaning. I believe he understands the Agreement and is entering into the Agreement freely, voluntarily and knowingly.


Paul R. Cirel

Attorney for Shane Doyle

Date: 4/01/09

EXHIBIT A

FILED
IN CLERKS OFFICE

2009 FEB -6 P 2:44

U.S. DISTRICT COURT
DISTRICT OF MASS.

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

v.

SHANE DOYLE,

Defendant.

Criminal No. 09-CR-10035 DPW

Violation:

21 U.S.C. §§331(a), 333(a)(2) and
352 (distribution of a misbranded
device)

INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times material to this Information, unless otherwise alleged:

BACKGROUND

1. SHANE DOYLE (hereinafter "DOYLE"), is an individual currently residing in Winchester, Massachusetts. From mid 2002 through approximately September 2007, DOYLE worked as a Territory Manager for a corporation hereinafter referred to as XYZ Corp ("XYZ"). XYZ was a corporation based in Hopkinton, Massachusetts engaged, *inter alia*, in the manufacture and sale of medical devices for human use, including medical devices for use in healing of fractured or broken bones, including: (a) Device-A, which was an implant to promote growth in certain long bone non-unions; (b) Device-B, which was a putty to promote bone

growth in certain spinal fusions; and (c) Device-C, which was a bone void filler for surgically created osseous defects or osseous defects resulting from traumatic injury.

2. The United States Food & Drug Administration (“FDA”) was the agency responsible for protecting the health and safety of the American public by ensuring, among other things, that medical devices designed for use in humans were safe and effective for their intended uses and labeled accurately and in compliance with the law.

3. Device-A, Device-B and Device-C were medical devices within the meaning of the Federal Food, Drug, and Cosmetic Act (“FDCA”), 21 U.S.C. §321(h).

4. On October 17, 2001, the FDA, in response to a prior application by XYZ, approved Device-A pursuant to a Humanitarian Device Exemption (“HDE”). The FDA approval was only for “use as an alternative to autograft in recalcitrant long bone nonunions where use of autograft is unfeasible and alternative treatments have failed.”

5. On April 7, 2004, the FDA, in response to a prior application by XYZ, approved Device-B pursuant to an HDE. The FDA approval was only for “use as an alternative to autograft in compromised patients requiring revision posterolateral (intertransverse) lumbar spinal fusion, for whom autologous bone and bone marrow harvest are not feasible or are not expected to promote fusion.”

6. On August 26, 2004, the FDA, in response to a Section 510(k) premarket notification of intent to market a bone void filler product, notified XYZ that it could market the device (Device-C). Device-C was indicated as “a bone void filler for voids or gaps that are not

intrinsic to the stability of the bony structure. It is indicated for surgically created osseous defects or osseous defects resulting from traumatic injury.”

7. XYZ has never applied to the FDA for use of Device-A in conjunction with or mixed with Device-C, nor has the FDA ever approved any such use.

8. XYZ has never applied to the FDA for use of Device-B in conjunction with or mixed with Device-C, nor has the FDA ever approved any such use.

9. At various times in 2007, **DOYLE** and others at XYZ Corp. promoted the sale and use of Device-A or Device-B to be mixed with and used in conjunction with Device-C. This was an unapproved use.

10. One of the means by which **DOYLE** and others promoted this unapproved use was to prepare and/or distribute “mixing instructions” to others (including surgeons, surgical staff, or employees of XYZ affiliates). There were a variety of mixing instructions used by **DOYLE** and XYZ. One set used affirmatively by **DOYLE** stated that “this could be printed out and put in the fridge with the OP-1 to make sure there are no questions on how to mix.”

Count One:

21 U.S.C. §§331(a), 333(a)(2) & 352(f)(1) - (Distribution of a Misbranded Device)

11. The allegations contained in paragraphs 1 through 10 are realleged and incorporated herein as if set forth in full.

12. In or about May 2007, in the District of Massachusetts and elsewhere, the defendant,

SHANE DOYLE,

with intent to defraud and mislead, did introduce and cause the introduction into interstate commerce, directly and indirectly, quantities of Device-B, a device within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §321(h), in combination with Device-C, which was an unapproved use, and therefore misbranded within the meaning of 21 U.S.C. §352(f)(1), in that Device-B's labeling lacked adequate direction for such use.

All in violation of 21 U.S.C. §§331(a), 333(a)(2), and 352(f)(1).

Respectfully submitted,

MICHAEL J. SULLIVAN
UNITED STATES ATTORNEY

By:

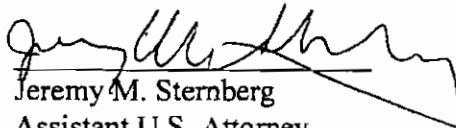

Jeremy M. Sternberg
Assistant U.S. Attorney

EXHIBIT B

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (the “Agreement”) is entered into among the United States of America, acting through the United States Department of Justice (the “United States”), and Shane Doyle (“Doyle”) (hereafter referred to as “the Parties”), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Doyle is an individual residing in Winchester, Massachusetts, and at all relevant times was employed by a corporation hereinafter referred to as [REDACTED].

B. The United States contends that it has certain civil claims, as specified in Paragraph 2, below, against Doyle for engaging in the following conduct during the period from approximately February 2003 through July 2007 (hereinafter the conduct described in this paragraph, including the subparagraphs below, will be referred to as the “Covered Conduct”):

(1) On various occasions and with respect to various medical facilities, from approximately February 2003 through July 2007, Doyle falsified written approvals of medical providers’ institutional review boards (“IRBs”), which approvals were required by law for the use of certain medical devices manufactured and sold by [REDACTED] and approved by the United States Food & Drug Administration (the “FDA”) pursuant to Humanitarian Device Exemptions for the healing of fractured or broken bones in certain defined, narrow indications (the “HDE Devices”); and

(2) Doyle, who was compensated on a percentage commission basis for sales he generated of the [REDACTED] Devices, received commissions on sales of [REDACTED] Devices made in connection with the conduct identified in subparagraph (1), above.

C. Doyle has agreed to enter a plea of guilty pursuant to Fed. R. Crim. P. 11(c)(1)(B) (the "Plea Agreement") to an Information which was filed in the District of Massachusetts, United States v. Shane Doyle (the "Criminal Action"), that alleges a violation of Title 21 U.S.C. §§ 331(a), 333(a)(2), and 352(f)(1).

D. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Doyle agrees to pay to the United States \$75,000 (Seventy-Five Thousand Dollars) (the "Settlement Amount"). Doyle agrees to pay the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Massachusetts. This sum shall constitute a debt immediately due and owing to the United States on satisfaction of the conditions set forth in this paragraph. Doyle agrees to make this electronic funds transfer no later than seven business days after the latest of the dates on which the following occur (the "Effective Date of the Agreement"): (a) this Agreement is fully executed by the Parties and delivered to Doyle's attorneys; and (b) seven business days after the date on which the Court accepts a Fed. R. Crim. P. 11(c)(1)(B) guilty plea as described in Preamble C in connection with the Criminal Action.

11(c)(1)(B) as described in Preamble C is not accepted by the Court, this Agreement shall be null and void at the option of the United States or Doyle. If either the United States or Doyle exercises this option, which option shall be exercised by notifying the other Party, through counsel, in writing within 10 business days of the Court's decision, the Parties will not object and this Agreement will be rescinded. If this Agreement is rescinded, Doyle will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the United States within 90 calendar days of notification of that rescission, except to the extent such defenses were available before the date of this Agreement.

3. Subject to the exceptions in Paragraph 4 (concerning excluded claims), below, in consideration of the obligations of Doyle in this Agreement, conditioned upon Doyle's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Doyle from any equitable claim the United States has or may have based upon the Covered Conduct pursuant to the Federal Food, Drug & Cosmetic Act, 21 U.S.C. § 301, *et seq.* or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Doyle) are the following claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- h. Any liability for failure to deliver goods or services due.

5. Doyle waives and shall not assert any defenses Doyle may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. Doyle fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Doyle has asserted, could have asserted, or may

assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. Doyle agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Doyle agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in his possession, custody, or control concerning the Covered Conduct.

8. Doyle expressly warrants that he has reviewed his financial situation and that he is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Doyle within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

9. In the event Doyle commences, within 91 days of the Effective Date of this Agreement, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Doyle's debts, or seeking to adjudicate Doyle as bankrupt or insolvent, Doyle respectfully agrees that:

a. Doyle's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547 or 548, and Doyle will not argue or otherwise take the position in any such case, proceeding or action that: (i) Doyle's obligations under this Agreement may be

avoided under 11 U.S.C. § 547 or 548; (ii) Doyle was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Doyle;

b. In the event that Doyle's obligations hereunder are avoided for any reason, including, but not limited to, the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Doyle for the claims that would otherwise be covered by the releases provided in this Agreement. If the United States chooses to do so, Doyle agrees that, for purposes only of any case, action or proceeding referenced in the first clause of this Paragraph, (i) any such claims, action or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that Doyle will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) Doyle will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the United States within 30 calendar days of written notification to Doyle that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available before the date of this Agreement; and (iii) the United States has valid claims against Doyle in the amount of at least \$75,000.00, and it may pursue its claims, inter alia, in the case, action or proceeding referenced in the first clause of this Paragraph, as well as

in any other case, action or proceeding; and

c. Doyle acknowledges that his agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

10. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity.

11. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Doyle represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

13. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the District of Massachusetts.

14. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

15. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

16. The individuals signing this Agreement on behalf of Doyle represent and warrant that they are authorized by Doyle to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

17. This Agreement may be executed in counterparts, each of which


constitutes an original and all of which constitute one and the same Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

18. This Agreement is binding on Doyle's successors, transferees, heirs, and assigns.

19. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

THE UNITED STATES OF AMERICA

DATED: 1/21/09

BY: 
DONALD J. SAVERY
Assistant United States Attorney
District of Massachusetts

SHANE DOYLE - DEFENDANT

DATED: 2/6/09

BY: 
SHANE DOYLE

DATED: 2/6/09

BY: 
PAUL R. CIREL
Counsel for Shane Doyle