IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. GLR-13-0374

REDDY VIJAY ANNAPPAREDDY, :
Defendant.

.....oOo.....

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION AND SUPPLEMENTAL MOTION TO LIMIT GOVERNMENT'S EVIDENCE (ECF 437 AND ECF 447)

The Government respectfully submits this Response to Defendant's Motion and Supplemental Motion to Limit Government's Evidence. In his Motion, Defendant complains of widespread, bad faith discovery violations of Rule 16(a)(1)(E)[1] that the Government denies. Defendant's position that the Government has withheld "basic discovery" is belied by the mountains of discovery that were originally produced and made available to trial counsel, that were provided to new counsel from trial counsel, that were reproduced by the Government and provided to new counsel at counsel's request, and which is public and part of the record and about which they are already aware. To be sure, this case has been a challenge at the very outset. There are many reasons and include the fact that, rather than comply in an orderly fashion with lawfully issued subpoenas to Pharmacare, Defendant immediately and abruptly shut its doors on ten pharmacies and "dumped" mountains of paper and health care protected information in the basement of its corporate office on Washington Boulevard post-indictment (in late August 2013)(hereinafter "Washington Blvd collection"). All of the parties were left to paw and search

[1] Rule 16(a)(1)(E) provides that: Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and (i) the item is material to preparing the defense; (ii) the government intends to use the item in its case-in-chief at trial; or (iii) the item was obtained from or belongs to the defendant.

through the documents in the fall and into the winter of 2013 and salvage what could be found under the time pressures placed by a bank and landlord not being paid. The integrity of the source of the items was completely called into question. Once items of value to Defendant were returned to wholesalers (i.e., the remaining prescription drugs), the paper and records of his former customers and the operating documents of the business were abandoned. Desks, computers, phones and other items were left for creditors to fight over.

And while it is true that the draft MEDIC analysis first produced in September 2013 and then in March 2014 was not in shape for the original June 2014 trial date (one reason for the use of a different internal forensic auditor at trial), there were other discovery issues caused in part by Defendant's own lack of attention to available discovery until January 2014 - despite an invitation to do on September 4, 2013 and clear knowledge of the Washington Blvd collection and the results of the Eloise Lane search warrant. Trial counsel did not even contact the Government about seeing or reviewing the evidence available until late November 2013.

Indeed, counsel for all three defendants grappled with the large amount of discovery in the case and the Government made itself available for meetings and emails with trial counsel at all dates and all times. The tone and respect of the emails with trial counsel clearly showed the Government's good faith efforts in this regard and trial counsels' own professionalism during the necessary processes. It is this lack of professionalism that has made the current posture of the case even more difficult to deal with than the ramifications of the falsity discovered in the Hammond analysis post-trial. *See* Memos documenting interactions with defense counsel attached hereto as Exhibit A and Exhibit B.[2]

[2] During the most recent meeting FBI hosted for counsel on August 11, 2016, one of the attorneys continued to make inappropriate and offensive remarks. While in the presence of Agent Lating and Agent Jimmy Young he made the unprompted comment to the effect, "If it's not white, it's not right". The agents did not comment or respond. The attorney also stated words to the effect that,

And although the Government shouldered blame for delay at the original pretrial status conference before Judge Bredar in March 2014, the truth is, as all experienced participants in a large case of this kind know, defense counsel were not ready for a June trial and it was not just because the "in and out analysis" was not complete nor because they did not have necessary discovery to defend the case. But the trial was delayed and it was because the sheer volume of information and the complexity of the case required additional time for all, particularly after the properly filed superseding indictment in March 2014 that was a result of the continuing post-search warrant investigation. Post-original indictment, the Eloise Lane search warrant was executed and the more than 500 items that were found secreted at the abandoned property owned by Defendant in his wife's name needed to be reviewed and analyzed. Moreover, the Defendant's literal dump of his pharmacies into Washington Blvd in response to lawful subpoenas left at all Pharmacare locations in July 2013 caused its own health protected information and discovery issues. Defendant's own response to his arrest and the search warrants when he failed to surrender to authorities, tried to kill himself and then shut down all operations, while still owing his primary supplier over a million dollars, all contributed to the challenging issues in this case.

Once the new trial date was in place for November 2014, the parties worked diligently to process the mountains of discovery. Four men pled; three of them proffered and testified at trial. Trial counsel spent hours together with the Defendant at the USAO and the government made itself available to answer any and all questions. Indeed, when trial counsel had difficulty accessing the PrimeRX data, the government set up a computer for counsel to use at any time. And four months before trial, the government provided to trial counsel grand jury testimony and investigative reports of countless persons who had been interviewed and provided reports that

---

"One of [his] best friends is black" and that "they banter back and forth with racial jokes to one another." Again, the agents made no comment.

documented the thousands of documents received.

If the Court will recall, the case was transferred from Judge Bredar in September 2014, a revised scheduling order was issued (ECF 115), and the Court mandated "at the pre-trial conference, pursuant to Local Rules 210 and 106.7, counsel shall attach tags to all exhibits and meet for the purpose of pretrial review of exhibits, except those to be used solely for impeachment." The Government complied and had the majority of exhibits marked, tagged and available in the Courtroom on November 3, 2013. Neither the Court nor trial counsel seemed to expect the arrival of the trial cart full of marked government exhibits at the pretrial conference but, nonetheless, the exhibits were ready and trial counsel and Defendant reviewed them at the USAO that day and they were made available for copying again.

New counsel complains about "Rule 16" discovery not produced despite the fact that as of **May 2015**, the government advised counsel that the trial exhibits, search warrant documents and Washington Blvd collection were available for them to review and copy.[3] It was not until July 12, 2016 (14 months later) that defense counsel sent a demand that all Rule 16 be ready for them by July 21, 2016. The government responded to defense counsel's demand on July 19, 2016, advising them that most of the documents that they were demanding had long ago been provided in discovery and reminding them that the "tangible items and documents" were available for them at the FBI and at the USAO. Yet Defendant continues to allege bad faith and continues to cast aspersions on every effort the Government makes to accommodate them.

The Government has prepared a partial log of selected discovery communications and

[3] Recently, counsel pointed another finger at the government, claiming it destroyed "exculpatory" evidence in March 2015. The reference here is to the fact that in early March 2015, after the trial, the government began to clean up papers and documents not used from the Washington Blvd collection and store the trial exhibits post- trial. The government began purging the contents of several unused boxes. These were items Defendant and his own attorneys had reviewed at length and were never marked as exhibits or used in any way by them at trial. Yet they couch their complaint again in the most accusatory of tones.

events through July 29, 2016, *see* Exhibit C, and will file this week under separate cover a binder of communications between the Government, trial counsel and new counsel for Defendant. Despite the fact that it will be a large filing, it is important for the record in this indisputably large, complex case. The Government has not included all of the emails and letters between the parties as some have already been produced in connection with the voluminous filings by new counsel and the search and copying for all relevant emails also proved time consuming. The Government believes the bulk of exchanges between the parties through the end of July 2016 are, however, included in Exhibit C. Despite government and trial counsels' ability to work professionally and transparently with each other, Defendant continues to mischaracterize the discovery issues prior to the first trial, a tactic that is unfair to the Government's efforts in this case. For example, Defendant continues to claim discovery violations against the Government when the information was available and known to Defendant and to trial counsel. These matters are more properly characterized as gripes by the Defendant against trial counsel whom Defendant believes should have followed up on or cross-examined a witness in a different way.

Having said that, the issue before the Court is whether the Government should be limited to the evidence produced in the first case. To the extent Defendant is referring to the pill shortage and "loss analysis" that was introduced through Mary Hammond in the first trial, the Government's response is this: Carol Kelly has utilized the same claims data (with errors corrected) and has compiled a summary of the same claims data that Defendant's experts did. Hence, it may be that this issue is completely moot because the Government is limiting the pill shortage evidence to her testimony in this regard. There is no new data.

Carol Kelly did, however, prepare a summary different than the one Hammond did. She broke down the analysis of pills claimed and inventory purchased *by month*. But it is the same government programs claims data. And the private claims data analysis she did is no different –

except corrected. Regarding the monthly breakdown, Ms. Kelly did this for the following reason:

The original (albeit false) Hammond analysis was based on the conservative premise (to the benefit of Defendant), that as of October 31, 2012 (the ending date of the analysis), all of the drugs purchased by Pharmacare were available to fill the prescriptions billed since January 1, 2007. In other words, if Pharmacare had only billed 10,000 pills on January 1, 2007 and Pharmacare never purchased a single pill until the purchase of 10,000 pills on October 1, 2012, the analysis would show no pill shortage because it is assuming that the 10,000 pills purchased on October 1, 2012 were always available to fill the claims. This, of course, is not how the real world works because once the pharmacy billed the 10,000 bills on January 1, 2007, it had to have on hand at or about that time, the 10,000 pills it was "billing and filling." In other words, to purchase the 10,000 pills five years later, would not explain away the fraud that was committed by billing for 10,000 pills it did not have on January 1, 2007.

That is exactly what happened in this case and it is exactly what Carol Kelly's analysis, using the very same data will show. The Carol Kelly summary using the same (corrected data) that all parties have been working with since Defendant uncovered the errors simply breaks down by month, the purchases and claims made because it is based on the real world premise that the pills be on hand by the pharmacy at the time it is billing and filling for the medication. The monthly analysis is attached hereto again as Exhibit D.

It goes like this: in 2007, Defendant had on hand inventory for the listed drugs that supported the claims he was making to government programs. In 2008 and 2009, however, the inventory began shrinking and the claims increased. These were the years where Defendant was the pharmacist, there was no Lisa Ridolfi to blame and there was no DC "replenishment program" providing inventory to Pharmacare. Indeed, by year end 2008 there was a huge pill shortage for the claims that had been made that year and because Pharmacare was in the hole, the starting

number of pills available for the beginning of 2009 was "0". The shortages continued to increase because as the pharmacy was continuing to make claims for pills it did not have sufficient inventory for, the purchase of new inventory could not rectify that. Those new purchases would simply represent new pills on hand for future claims. Indeed, the large purchases of drugs in September and October 2012, after Defendant knew of the federal investigation, simply reinforce this real world premise: drugs purchased in September and October 2012 could not explain away claims for pills in 2007, 2008, 2009, 2010, 2011 or even through August 31, 2012. It would simply represent inventory on hand for claims in the future. Indeed, if the Court will recall from the trial testimony, the purchase of drugs was in anticipation of "a few physicians HIV to go online and preparing ourselves for that." 12/1/14 at 38.

It is true the Government explored the use of a third party contractor at a new trial and took steps immediately to hire one. But the time provided for the new trial was simply too short and the fee too great to proceed. Hence, the Government is left with the evidence (claims data, albeit corrected) that was used at the first trial through a different government auditor (this one from the State) and a different summary chart (presenting the same claims data) will sought to be introduced.

Defendant claims that Carol Kelly's disclosure was "late" but they have had the information since April and May of this year. Her summary chart was re-produced to them August 12, 2016 with the exact same information from the May filing. Though *Jencks* material must still be compiled and produced for all witnesses, the law does not require that until after the witness testifies on direct. 18 U.S.C. § 3500. Obviously the Government intends to produce *Jencks* material earlier than that (as it nearly always does in nearly every case in this District).

To the extent, Defendant is trying desperately to keep "private claims" information out of this case, the Government can see why. No matter how one views the pill shortage, once the

private insurance claims are added, the shortage grows and the incriminating evidentiary value of that shortage is readily apparent when coupled with the witness testimony. But the private claims were introduced in summary fashion through Hammond, and the data was provided to trial counsel long before the first trial, and was provided by trial counsel to new counsel on May 5, 2015 (when trial counsel sent new counsel discs containing all of the purchase and claims data used for the inventory analysis). Carol Kelly's charts summarize the same data, correcting for the double counting issue identified by the defendant's experts. The government re-produced the private insurance data again.

Last, to the extent the Defendant is seeking to deny the Government's ability to call other witnesses introduced at the first trial, or introduce other exhibits selected from discovery already provided, the Court should deny that request. The Government has numerous other persons available to testify about the fraud scheme and may adapt its trial strategy based on information it learned during the first trial as well. One example is an eyewitness who did not testify at the first trial but long ago reporting seeing Jigar Patel and Hanuma Konda with trash bags of undelivered medications at Eloise Lane "separating" labels from prescriptions so the prescriptions could be reshelved. The Government should not be limited to presenting to a jury a mere "script" of the first trial. The charges are serious and the United States has the obligation to present the case with all available evidence even if it chooses not to use the same evidence and exactly the same witnesses as the first time around.

Finally, regarding the Court's dismissal of Count Three, the government would just like to point out that four letters of the six government exhibits (Gov. Exh. O40, O42, O43 and X2) to be introduced to prove the visa fraud were used as Trial Exhibits in the first trial. During cross-examination of Defendant he admitted the falsity of letters submitted to government agencies in the visa process. The other exhibit was a letter written on behalf of Annappareddy's

own immigration status and was part of the immigration file long ago produced to him prior to the first trial. The last document pertains to Jigar Patel who, until recently, was not available as a government witness. The Government believed that the original scheduling order of Judge Bredar had long been mooted by the first trial and believed it had properly put this Court and the parties on notice of its intention to supersede.

Respectfully submitted,

Rod J. Rosenstein
United States Attorney

By: __/s/_____
Sandra Wilkinson
Assistant U.S. Attorney
Catherine Schuster Pascale
Special Assistant U.S. Attorney
36 South Charles Street, Fourth Floor
Baltimore, Maryland 21201