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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NIRAJ PATEL,

Defendant.

CASE NO.

1:21CR 012

JUDGE

DLOTT

INDICTMENT

18 U. S. C. § 664

18 U. S. C. § 1028A

18 U. S. C. § 1343

FORFEITURE ALLEGATION

THE GRAND JURY CHARGES:

INTRODUCTION

At times material to this Indictment:

1. The Employee Retirement Income Security Act of 1974 (ERISA), Title 29, United States Code, Section 1001 et seq., was enacted to protect the interests of participants in private sector employee welfare benefit plans, including employee pension benefit plans. An employee pension benefit plan is a plan, fund, or program established or maintained by an employer or association of employers for the purpose of providing retirement income to employees. Employees that elect to participate in the retirement plan can save a portion of their income and defer paying taxes on the income until they withdraw their money from the plan either at retirement or through early withdrawals. A typical ERISA employee pension benefit plan is the 401(K).

2. ERISA requires that sponsors of private employee benefit plans design and administer their plans in accordance with ERISA. The core of Title I of ERISA consists of provisions that address the conduct of persons (fiduciaries) who are responsible for operating pension and welfare benefit plans. Fiduciaries are required to discharge their duties solely in the interest of plan participants and beneficiaries for the exclusive purpose of providing benefits and defraying reasonable expenses of plan administration.

3. Plan sponsors of ERISA pension benefit funds frequently retain a Third Party Administrator (TPA) to administer the benefit plans. A TPA commonly serves as an agent of plans for processing claims and for general plan administration and recordkeeping.

4. Acme Health Services, Inc. is a Home Health Care provider, headquartered in Indianapolis, Indiana ("ACME").

5. Academy Health Services, Inc. (ACADEMY) is a Home Health Care provider, headquartered in Dayton, Ohio.

6. ACME is an employer engaged in commerce that sponsors the AHS 401(k) plan ("AHS plan"), has 2 or more participants and the AHS plan is subject to ERISA.

7. ACADEMY is engaged in commerce, has adopted the AHS plan, and is a participating employer whose employees may participate in the AHS plan.

8. J.P. and V.P. are the Fiduciaries for the AHS plan and have the sole authority to manage its assets.

9. The defendant, **NIRAJ PATEL**, was employed by ACADEMY. However, **PATEL**, was not a fiduciary for the AHS plan and did not have the authority to act on behalf of the AHS plan. **PATEL** maintained a personal bank account at Fifth Third Bank (x9305).

10. Latitude Retirement is headquartered in Indiana and registered to do business in Ohio. Latitude Retirement maintains an office at 7750 Montgomery Road, Cincinnati, Ohio in the Southern District of Ohio. Latitude Retirement served as a third party administrator (TPA) for the AHS plan, processing claims, and managing plan administration and recordkeeping.

11. Mid Atlantic Trust Company, located in Pennsylvania, served as the asset custodian for the AHS plan.

COUNTS ONE AND TWO
(WIRE FRAUD)

12. Paragraphs 1 through 11 of the Indictment are incorporated here.

THE SCHEME

13. From on or about June 21, 2019 and continuing through October 21, 2019, the defendant, **NIRAJ PATEL**, in the Southern District of Ohio and elsewhere, devised and intended to devise a scheme to defraud the AHS plan, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

14. It was part of the scheme that the defendant, **NIRAJ PATEL**, would forge the signature of an AHS plan fiduciary on hardship withdrawal request forms.

15. It was part of the scheme that the defendant, **NIRAJ PATEL**, would falsely represent on hardship withdrawal request forms that the funds requested were for the permissible purpose of purchasing his primary residence and paying medical expenses.

16. It was part of the scheme that the defendant, **NIRAJ PATEL**, would use fraudulent hardship withdrawal request forms to obtain money from the AHS plan.

17. It was part of the scheme that the defendant, **NIRAJ PATEL**, would send the fraudulent hardship withdrawal request forms, typically via email, to the AHS plan's TPA, Latitude Retirement, which would cause the AHS plan's asset custodian to disperse funds to **PATEL's** x9305 account.

18. It was part of the scheme that the defendant, **NIRAJ PATEL**, would then use the funds to pay for impermissible expenses, including personal expenses.

19. On or about each of the dates set forth below, in the Southern District of Ohio and elsewhere, the defendant, **NIRAJ PATEL**, for the purpose of executing the scheme described above, caused to be transmitted by means of a wire communication in interstate commerce the signals and sounds described below for each count, each transmission constituting a separate count of this Indictment:

Count	Date	Description
1	6/21//2019	PATEL completed and sent a Hardship Withdrawal Request Form via electronic mail to S.L., an employee of the TPA, Latitude Retirement.
2	10/2/2019	PATEL completed and sent a Hardship Withdrawal Request Form via electronic mail to S.L., an employee of the TPA, Latitude Retirement.

All in violation of Title 18, United States Code, Section 1343.

COUNTS THREE AND FOUR
(Theft or Embezzlement from Employee Benefit Plan)

20. Paragraphs 1 through 11 of the Indictment are incorporated here.

21. On or about the date set forth below for each count, in the Southern District of Ohio and elsewhere, the defendant, **NIRAJ PATEL**, knowingly stole, embezzled and unlawfully and willfully abstracted and converted to his own use and the use of others, money, funds, premiums, credits and assets of the AHS plan identified below for each count, subject to Title I of the Employee Retirement Income Security Act of 1974, and of funds connected therewith, by transmitting a distribution request in the amount identified below:

Count	Date	Description
3	7/1/2019	\$90,000 was withdrawn from the Plan's Assets held at K-Trade/Mid-Atlantic Trust Co. and deposited into PATEL's personal checking account at Fifth Third Bank, account no. 9305.
4	10/11/2019	\$34,500 was withdrawn from the Plan's Assets held at K-Trade/Mid-Atlantic Trust Co., and deposited into PATEL's personal checking account at Fifth Third Bank, account no. 9305.

All in violation of Title 18, United States Code, Sections 664.

COUNTS FIVE AND SIX
(Aggravated Identity Theft)

22. Paragraphs 1 through 11 of the Indictment are incorporated here.

23. On or about the dates set forth below, in the Southern District of Ohio and elsewhere, the defendant, **NIRAJ PATEL**, knowingly transferred, possessed and used, without lawful authority, a means of identification of another person, to wit, the signature of the individuals whose initials are set forth below, during and in relation to a felony enumerated in 18 U.S.C. § 1028A, to wit, Wire Fraud, in violation of 18 U.S.C. § 1343, and Theft or Embezzlement from Employment Plan, in violation of 18 U.S.C. § 664, knowing that the means of identification belonged to another actual person:

Count	Date	Description
5	7/1/2019	Patel completed a hardship withdrawal application containing forged and fraudulent signature of J.P. and submitted it to Latitude Retirement Services, for processing.
6	10/11/2019	Patel completed a hardship withdrawal application containing forged and fraudulent signature of J.P. and submitted it to Latitude Retirement Services, for processing.

All in violation of Title 18, United States Code, Section 1028A.

FORFEITURE ALLEGATION

Upon conviction of any of the offenses set forth in Counts 1 through 4 of this Indictment, the defendant, **NIRAJ PATEL**, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the violation(s), including but not limited to a sum of money which represents the amount of proceeds the defendant obtained as a result of the offense(s).

SUBSTITUTE ASSETS

If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of the defendant, up to the value of the property described above.

A TRUE BILL.

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GRAND JURY FOREPERSON

VIPAL J. PATEL
ACTING UNITED STATES ATTORNEY


ANTHONY SPRINGER
ASSISTANT UNITED STATES ATTORNEY