

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

FOR THE DISTRICT OF NEW MEXICO

MAR 23 2010

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CSABA PERCIFULL,)
)
 Defendant.)

MATTHEW J. DYKMAN
CLEAR

Cr. No. 10-728 MCA

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **Csaba Percifull**, and the Defendant's counsel, Erlinda Johnson:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

- 2. The Defendant further understands the Defendant's rights:
 - a. to be prosecuted by indictment;
 - b. to plead not guilty, or having already so pleaded, to persist in that plea;
 - c. to have a trial by jury; and
 - d. at a trial:
 - 1) to confront and cross-examine adverse witnesses,

- 2) to be protected from compelled *self-incrimination*,
- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to an Information charging a violation of 18 U.S.C. § 152(1), that being Concealment of Assets.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose is:
 - a. imprisonment for a period of not more than five years;
 - b. a fine not to exceed the greater of \$250,000.00 or twice the pecuniary gain to the defendant or pecuniary loss to the victim;
 - c. a mandatory term of supervised release of not more than three years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
 - d. a mandatory special penalty assessment of \$100.00; and
 - e. restitution as may be ordered by the Court.

5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A. In this case, the Defendant agrees to pay restitution in the total principal amount to be determined by combining the following amounts:

a) The net gain realized, or which could be realized, from the sale of the two pieces of real estate not disclosed in the bankruptcy proceedings, further described in the Defendant's Admission of Facts below as Avalon 2 subdivision, Lot 22P1, Block G, and El Rancho Grande I subdivision, Unit 4B, Lot 8P1, Block 19. The net gain to the defendant for the one property which has been sold is \$15,000, and his equity in the second property which the defendant still owns is \$16,000 to \$20,000.

b) the fair market value of three pieces of personal property which were not disclosed in the bankruptcy proceedings, further described in the Defendant's Admission of Facts below as a Jeep vehicle valued at \$10,000, and two water purification systems, valued at \$9,000 in total.

7. The United States reserves the right to make known to the United States Pretrial Services and Probation Office and to the Court, for inclusion in the presentence report to be prepared under Federal Rule of Criminal Procedure 32 any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

DEFENDANT'S ADMISSION OF FACTS

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense to which I am pleading guilty. I recognize and

accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

a. On or before October 14, 2005, and continuing to on or about January 23, 2006, in Bernalillo County, District of New Mexico, while a bankruptcy proceeding was pending in which I was the debtor, I knowingly and fraudulently concealed the following property from the bankruptcy trustee, which property was part of my bankruptcy estate: a residence located at 8416 Stony Creek, SW, Albuquerque, NM; a residence located at 9300 Jetty Court, SW, Albuquerque, NM; a Jeep Liberty automobile; and two water purification systems.

b. On October 14, 2005, in Albuquerque, New Mexico, I filed a petition under chapter 7 of the Bankruptcy Code. According to the Summary of Schedules, and based on information I gave to my attorney, I identified debt consisting of \$126,814.86, which was largely comprised of credit card debt.

c. Within the bankruptcy filings, I made the following false statements or omitted to identify assets which should have been listed as part of the bankruptcy estate for the purpose of fraudulently concealing the assets from the bankruptcy trustee:

1) In Schedule A, I indicated that I had no real property at the time of filing for bankruptcy, but stated that in the two years prior to filing I had two rental properties which I sold in approximately February, 2005. I also indicated in Schedule C that I did not receive any proceeds from these sales, and that the mortgage holders were paid from the sales. In addition,

on question 10 of my Statement of Financial Affairs, I represented that other than in the ordinary course of business, I had not transferred any property within one year immediately preceding the commencement of the case.

2) In actuality, I had two rental properties, which I had transferred by way of a warranty deed filed with the Bernalillo County Clerk to my friend, Cynthia Martin, on July 5, 2005. I received no consideration for the transfers. The first property was described as Avalon 2 subdivision, Lot 22P1, Block G. The second property was described as El Rancho Grande I subdivision, Unit 4B, Lot 8P1, Block 19. One of these properties was sold by Ms. Martin while I was in Romania in 2006, for a net gain of \$15,000.00. Although Ms. Martin may have kept the proceedings from this sale, I acknowledge this asset was concealed in my bankruptcy proceeding. Ms. Martin later deeded the second property back to me, which I still own. Even though I claimed to no longer own the two properties in the bankruptcy pleadings, I included these properties in my 2005 and 2006 tax returns.

3) In Schedule B, under question 23, I indicated that I owned only one car, a 1999 Ford F-150. However, at the time I filed for bankruptcy, I also owned a Jeep Liberty which I shipped to Romania and failed to list as an asset.

4) In Schedule B, I also failed to disclose ownership of two water purification machines which are worth a total of approximately \$9,000.00.

7) I was discharged in bankruptcy on January 23, 2006, and failed to disclose any of the above assets to the trustee prior to discharge.

9. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime to which the Defendant will plead guilty. The Defendant agrees that

the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

10. The United States and the Defendant stipulate as follows:

a. As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to U.S.S.G. § 3E1.1, so long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a reduction of two or three levels, as appropriate, from the base offense level as calculated under the sentencing guidelines. This reduction is contingent upon the Defendant personally providing to the United States Probation Officer who prepares the presentence report in this case an appropriate oral or written statement in which the Defendant clearly establishes the Defendant's entitlement to this reduction. Further, the United States is free to withdraw this stipulation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing. Such conduct would include committing additional crimes, failing to appear in Court as required, and/or failing to obey any conditions of release that the Court may set.

b. The Defendant agrees to pay restitution in the total approximate amount listed in Paragraph 6 above. Inasmuch as the defendant has admitted concealment and transfer of assets in contemplation of bankruptcy, the defendant may be required by the bankruptcy trustee to relinquish any interest he may have in the real or personal property described above in Paragraphs 6 and 8 of this agreement, and to turn over said assets to the bankruptcy trustee who

will administer and liquidate the assets, identify creditors and report to the Court regarding the amounts received by the creditors.

c. Apart from the stipulations set forth in this plea agreement, the United States and the Defendant reserve their rights to assert any position or argument with respect to the sentence to be imposed, including but not limited to the applicability of particular sentencing guidelines, adjustments under the guidelines, departures or variances from the guidelines, and the application of factors in 18 U.S.C. § 3553(a).

d. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

11. The Defendant understands that the above stipulations are not binding on the Court and that whether the Court accepts these stipulations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Further, the Defendant understands that the Court may choose to vary from the advisory guideline sentence. The Defendant understands that if the Court does not accept any one or more of the above stipulations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court varies from the advisory guideline range, the Defendant will not seek to withdraw the

Defendant's plea of guilty. In other words, regardless of any stipulations the parties may enter into, the Defendant's final sentence is solely within the discretion of the Court.

DEFENDANT'S ADDITIONAL OBLIGATIONS

12. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

WAIVER OF APPEAL RIGHTS

13. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a Defendant the right to appeal a conviction(s) and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal his conviction(s) and any sentence, including any order of restitution, within the applicable advisory guideline range as determined by the Court. The Defendant specifically agrees not to appeal the Court's resolution of any contested sentencing factor in determining the advisory sentencing guideline range. In other words, the Defendant waives the right to appeal both the Defendant's conviction(s) and the right to appeal any sentence imposed in this case except to the extent, if any, that the Court may depart or vary upward from the advisory sentencing guideline range as determined by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) pursuant to 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

GOVERNMENT'S AGREEMENT

14. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that the United States will not bring additional criminal charges against

the Defendant arising out of the facts forming the basis of the present information. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

15. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

16. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crimes or offenses contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

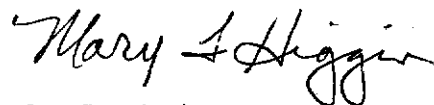
17. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$100.00 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

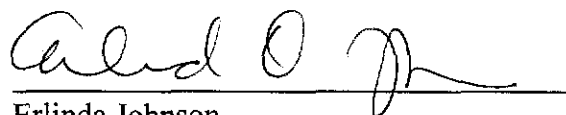
18. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this 23rd day of March, 2010.

GREGORY J. FOURATT
United States Attorney



Mary L. Higgins
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274



Erlinda Johnson
Attorney for the Defendant

I have read this agreement and carefully reviewed every part of it with my attorney. I understand the agreement and voluntarily sign it.



Csaba Percifull
Defendant