

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 03-80660
FILED: 10/30/03
HONORABLE: NANCY G. EDMUNDS

v.

VIOLATION: 18 U.S.C. § 1956(h)

OFFENSE: Conspiracy to Commit
Money Laundering

D-3 DAN F. WHITT

Defendant.

STATUTORY MAXIMUM
INCARCERATION:
20 Years

STATUTORY MAXIMUM
FINE: \$500,000

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RULE 11 PLEA AGREEMENT

The United States Department of Justice and Dan F. Whitt (“defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:¹

1. Guilty Plea.

A. The defendant agrees to waive indictment to the filing of a one count information to be filed in the United States District Court for the

¹The words “United States Department of Justice” and the word “government” in this agreement refer only to the Antitrust Division of the United States Department of Justice.

Eastern District of Michigan and to plead guilty to the one-count Information. The Information will charge the defendant with conspiring to violate the money laundering statutes, 18 U.S.C. §§ 1956(a)(1)(B)(i), by entering into a conspiracy to conceal the proceeds from a specified unlawful activity, namely, a scheme to commit mail fraud (18 U.S.C. § 1341) and a scheme to commit wire fraud (18 U.S.C. § 1343), arising from soliciting kickbacks in the retail video duplicating, replicating and distribution industry for the period from on or about May 2000 to November 2001, in violation of 18 U.S.C. § 1956(h). Defendant acknowledges that the Court may consider any other relevant conduct in determining the appropriate sentence.

B. The facts or elements that the government would need to prove beyond a reasonable doubt at trial are:

1. That there was an agreement to commit money laundering; and
2. That defendant joined the agreement knowing its purpose and with intent to further the illegal purpose.

C. The parties stipulate to the following, which the United States Department of Justice is prepared to prove, as an accurate factual basis for defendant's guilty plea:

From at least April 2000 through November 12, 2001, Dan F. Whitt, the defendant, was an executive of an audio-visual company located in Troy, Michigan,

which buys licensing rights from television and movie programmers, then packages these properties for retail sale as videotapes and DVDs. The defendant and others willfully devised a scheme to defraud that permitted the defendant to obtain or seek to obtain money by means of false or fraudulent pretenses. Without notifying or receiving authorization from his superiors, the defendant demanded monies, commonly referred to as kickbacks, from vendors in exchange for his support in the awarding of contracts for which his employer, the audio-visual company, had solicited quotes from the vendors.

The defendant at all times relevant maintained residences in both Little Rock, Arkansas and in Royal Oak, Michigan, which is located within the Eastern District of Michigan.

Beginning in May 2000, the defendant solicited and obtained a kickback from a Michigan vendor ("Vendor One") seeking to do business with the audio-visual company in exchange for the defendant's continued support during the contract negotiations with the audio-visual company and in fulfilling the contract after its award. Vendor One agreed to pay the defendant \$712,000 and made payments in excess of \$592,000 prior to the termination of the conspiracy. To conceal the proceeds, the defendant, Vendor One and others agreed to have Vendor One pay an Arkansas company for purported consulting work. The consulting agreement was not reduced to writing and no invoices were transmitted to Vendor One. Vendor

One wired monies to Pennsylvania, which were then wired elsewhere, ultimately being transferred or wired to a financial account established in the name of the Arkansas company, but created for the use and benefit of the defendant. Once the money was deposited in the Arkansas company's account, the defendant and others, through a series of transactions, further used the money or transferred the money to other accounts controlled by him or others affiliated with him.

Thereafter, at least as early as July 1, 2001, the defendant solicited a California vendor ("Vendor Two") for a \$1 million kickback. Vendor Two was seeking to obtain a multi-year, multi-million dollar contract with the audio-visual company. The defendant conditioned his favorable support in the contract negotiations on the payment of the \$1 million kickback. On or about July 5, 2001, the defendant placed an interstate telephone call from Michigan to California to Vendor Two to discuss the kickback. This was one of a series of interstate telephone calls placed by the defendant to Vendor Two in furtherance of the scheme to defraud.

On or before July 9, 2001, the defendant and others invited an attorney, licensed in the state of Arkansas, into the conspiracy, which he agreed to join. Soon after the meeting, the attorney drafted a phony consulting agreement designed to conceal and disguise the nature, location, source, ownership, and control of the anticipated kickback proceeds. To ensure that no one could track them from Vendor

Two, Vendor Two would issue payments to a corporation, which was completely unrelated to the defendant, for consulting services purportedly provided to Vendor Two, creating the illusion that the corporation was entitled to the \$1 million from Vendor Two.

On or about July 12, 2001 the attorney sent a facsimile from Arkansas to California containing the phony consulting agreement to agents of Vendor Two. The agreement contemplated Vendor Two hiring and then paying a Nevada corporation \$1 million dollars for purported consulting services. The conspirators did not identify the defendant nor the attorney in the consulting agreement. The attorney further purposely misidentified the president of the Nevada corporation on the purported consulting agreement and forged the purported president's signature. On or about July 13, 2001, agents of Vendor Two rejected the kickback proposal and refused to pay the \$1 million dollar kickback. When rejecting the solicitation, Vendor Two's agents informed the conspirators that conditioning the award of the multi-year, multi-million dollar contract award on the \$1 million kickback payment was illegal. The rejection was sent certified mail through the United States Postal Service from California to Arkansas.

After being rejected by Vendor Two, the defendant solicited Vendor Three, located in Troy, Michigan, in September 2001, for a \$2 million dollar kickback. Vendor Three was seeking to obtain a multi-year, multi-million dollar contract with

the audio-visual company. The defendant conditioned his favorable support in the contract negotiations on the payment of the \$2 million kickback.

During a meeting on or about September 28, 2001, the conspirators agreed that the attorney would meet with Vendor Three to discuss and finalize the details of the scheme to defraud, including how to conceal and disguise the proceeds. As agreed in the September 28, 2001 meeting, the attorney flew from Arkansas to Michigan on or about October 9, 2001, to meet with Vendor Three.

In November 2001, the attorney sent Vendor Three via Federal Express, an interstate carrier of mail matter, a phony consulting agreement that contemplated Vendor Three paying a Wyoming corporation \$2 million dollars for purported services. The agreement called for Vendor Three to pay the corporation \$2 million, \$1 million up front and the balance in installments. The conspirators purposely did not identify the defendant nor the attorney in the consulting agreement. Further, the conspirators purposely misidentified the president of the Wyoming corporation on the purported consulting agreement.

Vendor Three refused to pay the kickback, reported the conduct to the audio-visual defendant's superiors, who then fired the defendant on or about November 12, 2001, ending the conspiracy.

2. Sentence Agreement.

A. Imprisonment. The United States Department of Justice and the defendant agree on the following Sentencing Guidelines calculations:

- i) Pursuant to U.S.S.G. § 2S1.1(a)(1), the Laundering of Monetary Instruments, a base offense level of 6;
- ii) Pursuant to U.S.S.G. § 2B1.1(b)(1)(J), Loss Exceeds 2,500,000, an offense level increase of 18;
- iii) Pursuant to U.S.S.G. § 2S1.1(b)(2) (B), Conviction under § 1956, an offense level increase of 2;
- iv) Pursuant to U.S.S.G. § 3B1.3, Abuse of Position of Trust, an offense level increase of 2;
- v) Pursuant to U.S.S.G. § 3E1.1(a), Acceptance of Responsibility, an offense decrease of 2; and
- vi) Pursuant to U.S.S.G. § 3E1.1(b), Acceptance of Responsibility, an offense decrease of 1.

B. The United States Department of Justice and the defendant do not agree on the applicability of U.S.S.G. § 2X1.1. The defendant intends to argue for a three-point deduction in his offense level pursuant to U.S.S.G. § 2X1.1(b)(2). The United States Department of Justice will oppose this deduction.

C. The parties further agree that a sentence of no more than 64 months of imprisonment is an appropriate disposition of the case.

D. Fine. Unless the court determines that defendant will not reasonably be able to pay a fine, or that paying a fine will unduly burden any of defendant's dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. If the Court were to impose a fine, the defendant understands and agrees that if the fine imposed by the Court is not fully paid within 15 days of sentencing, then the defendant shall pay interest on any unpaid amount as provided under 18 U.S.C. § 3612(f). The defendant agrees that he will not, absent a written agreement with the government, file any motion to reduce, modify or alter the fine imposed upon him by the Court. In determining the sentence, the Court shall consider the expected costs to the government of any term of imprisonment, probation, or supervised release.

E. Supervised Release. The Court will impose a term of supervised release to follow imprisonment. The supervised release term that the Court chooses will be at least two years and at most three years. If defendant violates a condition of release, the Court will then be able to impose an additional prison sentence that could be as long as the original term of release. This agreement does not limit the sentence the Court could impose in that situation.

F. Special Assessment. Defendant must pay a special assessment of \$100 and must bring the receipt to Court on the day of sentencing.

G. Restitution. Defendant agrees that the Court shall order restitution, pursuant to any available provision of law, for any loss caused to: (1) the victims of any offense charged in this case, and (2) the victims of any criminal activity that was part of the same course of conduct or same scheme or plan as defendant's charged offense.

H. Facility Assignment and Self-Surrender. The government will not object to defendant's request that the Court recommend to the U.S. Bureau of Prisons that the defendant be assigned to a facility in proximity to Little Rock, Arkansas to serve his sentence of imprisonment, and that the Court order that the defendant be released following imposition of sentence to allow him to self-surrender to the assigned facility on a specified date. The government agrees that it will recommend the release of the defendant on his personal recognizance, under 18 U.S.C. § 3142, with travel restricted to within the United States.

3. Determining the Appropriate Sentence.

A. Factors Affecting the Sentence. Sentencing for the offense to be charged will be conducted pursuant to the 2002 U.S.S.G. Manual. The attached worksheets represent the stipulation of the parties with respect to all of the sentencing guideline provisions that they agree upon in this case. The parties do not agree on the applicability of U.S.S.G. § 2X1.1., as noted

above. The Court may reject these calculations. Despite these stipulations, attorneys for the United States Department of Justice are not restricted from presenting any evidence or other factual information to the Court. The government may also defend or appeal any of the court's determinations, including appealing a determination by the Court that U.S.S.G. § 2X1.1. does apply. The United States Department of Justice may recommend against giving defendant credit for acceptance of responsibility if, after making this plea offer, the United States Department of Justice learns of information inconsistent with that adjustment.

B. Rejection of agreement. If the Court rejects the sentence agreement found in paragraph 2C of this agreement, including a rejection because the court's determination of the criminal history category or offense level conflicts with the stipulation by the parties, defendant may: (1) withdraw the guilty plea, or (2) continue with the plea and risk receiving a sentence higher than that agreed to by the parties. The United States Department of Justice may also withdraw from the agreement if it learns prior to sentencing of information inconsistent with the stipulated guidelines calculations. The parties agree that any delay prior to either side's withdrawal from the agreement is excludable under the Speedy Trial Act.

4. Defendant's Obligations. Defendant agrees to assist the United States Department of Justice in the investigation and prosecution of others involved in criminal activities, as specified below.

A. Truthful Information and Testimony. Defendant will provide truthful and complete information concerning the acquisition of vendor rights for the duplication or replication of video units for the company, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States Department of Justice is a party ("Federal Proceeding"). Defendant will provide full debriefings as requested by the United States Department of Justice, and federal, state, and local law enforcement agencies. Defendant will respond fully and truthfully to all inquiries of the United States Department of Justice in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or Court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. § 1503). Testimony may include, but is not limited to, grand jury proceedings, trials, and pretrial and post-trial proceedings. Defendant agrees to be available for interviews in preparation

of all testimony. Defendant further agrees to submit, upon request, to government-administered polygraph examinations to verify defendant's full and truthful cooperation. Defendant understands that this obligation to provide cooperation continues after sentencing and that failure to follow through constitutes a breach of this agreement.

B. Nature of Cooperation. The defendant agrees to cooperate in good faith, meaning that the defendant will not only respond truthfully and completely to all questions asked, but will also volunteer all information that is reasonably related to the subjects discussed in the debriefing. In other words, the defendant may not omit facts about crimes, participants, or defendant's involvement, and then claim not to have breached this agreement because defendant was not specifically asked questions about those crimes, participants, or involvement. Defendant will notify the United States Department of Justice in advance if defendant intends to offer a statement or debriefing to other persons other than defendant's attorney. Defendant is not prevented in any way from providing truthful information helpful to the defense of any person. Any actions or statements inconsistent with continued cooperation under this agreement, including but not limited to criminal activity, or a statement indicating a refusal to testify, or any other conduct

which in any way undermines the effectiveness of defendant's cooperation, constitutes a breach of this agreement.

C. Advising Court of Cooperation. Subject to the ongoing, full, and truthful cooperation of the defendant and before sentencing in the case, the United States Department of Justice will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and his commitment to prospective cooperation with the investigation and prosecutions of the United States Department of Justice, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct.

D. Use of Information Against Defendant. In exchange for defendant's agreement to cooperate with the government, as outlined above, the government agrees not to use new information that defendant provides pursuant to this agreement about defendant's own criminal conduct against defendant at sentencing in this case. Such information may be revealed to the Court but may not be used against the defendant in determining defendant's sentence range, choosing a sentence within the range, or departing from the range. There shall be no such restrictions on the use of information: (1) previously known to law enforcement agencies; (2) revealed to law enforcement agencies by, or discoverable through, an independent

source; (3) in a prosecution for perjury or giving a false statement; or (4) in the event there is a breach of this agreement.

5. Government's Obligations.

Subject to the full, truthful, and continuing cooperation of the defendant, as described in this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, the United States Department of Justice will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of any mail fraud, wire fraud or money laundering scheme involving the acquisition of vendor rights from the company for the duplication or replication of video units ("Relevant Offense"). The non-prosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

6. Subsequent Challenges to Conviction or Breach of Agreement.

A. If at any time the defendant tries to withdraw the guilty plea to any count; attacks the validity of the conviction on any count; or fails to comply with the terms of the agreement, the government is released from its

promises under this agreement and, in particular, may prosecute defendant on any charge that it agreed to dismiss or not to bring.

B. Defendant waives a double jeopardy defense as to any charges the government brings or pursues under the previous paragraph. Defendant waives any speedy trial or statute of limitations defense for the period of time between the date defendant signed this agreement and (a) the date an order permitting withdrawal of the plea, vacating the plea, or reversing the conviction on any count becomes final, or (b) the date the United States Department of Justice notifies defendant in writing of defendant's failure to comply with the agreement, whichever is later.

C. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States Department of Justice from its obligations under this Plea Agreement based on the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States Department of Justice, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

7. Defendant's Waiver of Appeal Rights. If the Court imposes a sentence equal to or less than the maximum sentence described in paragraph 2 of this agreement, the defendant waives any right he may have to appeal his conviction or sentence, including any right under 18 U.S.C. § 3742 to appeal on the grounds that the sentence was imposed as a result of an incorrect application of the sentencing guidelines. Nothing in this paragraph shall act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct.

8. Voluntary Plea. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States Department of Justice has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

9. No other terms. This document constitutes the entire agreement between defendant and the United States Department of Justice with respect to the charges noted above in this criminal case. This Plea Agreement cannot be modified except in writing, signed by the United States Department of Justice and the defendant. The defendant understands that he may be subject to administrative action by federal or

state agencies other than the United States Department of Justice, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States Department of Justice agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant as a

matter for that agency to consider before determining what administrative action, if any, to take.

JEFFREY G. COLLINS
United States Attorney
Eastern District of Michigan

“/s/”

ALAN GERSHEL
Criminal Chief, E.D. Michigan

“/s/”

KEVIN C. CULUM
[3460--MT]

Dated: 9/30/03

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By signing this document, the defendant acknowledges that he has read this entire document, understands it and agrees to its terms; and also acknowledges that he is satisfied with his attorney's advice and representation.

“/s/”

DAN F. WHITT
Defendant

“/s/”

WALTER J. PISZCZATOWSKI
Attorney for Dan F. Whitt

Dated: 9/24/03