

MAY 14 2009

JAMES N. HATTEN, Clerk  
By:  Deputy Clerk

COPY

GUILTY PLEA and PLEA AGREEMENT

United States Attorney  
Northern District of Georgia

U.S. Department of Justice  
Antitrust Division  
Atlanta Field Office

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CRIMINAL NO. 1:09-CR-0232-RWS

MELISSA DEATON TESVICH, defendant, having received a copy of the above-numbered Criminal Information and having waived indictment, hereby pleads GUILTY to the count therein charged. The defendant, her counsel, the United States Attorney for the Northern District of Georgia and the United States Department of Justice – Antitrust Division (both the United States Attorney for the Northern District of Georgia and the United States Department of Justice – Antitrust Division are collectively referred to herein as “the Government”), subject to approval by the Court, have agreed upon a negotiated plea in this case, the terms of which are as follows:

ADMISSIONS

1. The defendant admits that she is pleading guilty because she is in fact guilty of the crime charged in the Criminal Information.


WAIVERS

2. The defendant understands that by pleading guilty, she is giving up the right to plead not guilty and the right to be tried by a jury. At a trial, the defendant would have the right to an attorney, and if the defendant could not afford an attorney, the Court would appoint one to represent the defendant without charge. During the trial, the defendant would be presumed innocent and the Government would have the burden of proving her guilty beyond a reasonable doubt. The defendant would have the right to confront and cross-examine the witnesses against her. If the defendant wished, she could testify on her own behalf and present evidence in her defense, and she could subpoena witnesses to testify on her behalf. If, however, the defendant did not wish to testify, that fact could not be used against her. If the defendant were found guilty after a trial, she would have the right to appeal the conviction. The defendant understands that by pleading guilty, she is giving up all of these rights and there will not be a trial of any kind. The defendant also understands that she ordinarily would have the right to appeal her sentence and, under some circumstances, to attack the sentence in post-conviction proceedings. By entering this Plea Agreement, the defendant may be waiving some or all of those rights to appeal or collaterally attack her sentence, as specified below. Finally,



the defendant understands that, to plead guilty, she may have to answer questions posed to her by the Court concerning the rights that she is giving up and the facts of this case, and the defendant's answers, if untruthful, may later be used against her in a prosecution for perjury or false statements.

3. APPEAL WAIVER. The defendant understands that 18 U.S.C. § 3742 provides for the appeal by a defendant of her sentence under certain circumstances. To the maximum extent permitted by federal law, the defendant voluntarily and expressly waives the right to appeal her sentence and the right to collaterally attack her sentence in any post-conviction proceeding on any ground (to include, but not limited to, any motions pursuant to 28 U.S.C. §§ 2254 or 2255), except if the Court imposes a sentence higher than the advisory sentencing guidelines range or a sentence higher than the statutory maximum. The defendant understands that this Plea Agreement does not limit the Government's right to appeal, but if the Government files an appeal, the Defendant may also appeal.

#### SENTENCING INFORMATION

4. The defendant understands that, based on her plea of guilty, she will be subject to the following maximum and mandatory minimum penalties:

- (a) Maximum term of imprisonment: Charged Offense - 3 years.

- (b) Mandatory minimum term of imprisonment: None.
- (c) Term of supervised release: 0 years to 1 year.
- (d) Maximum fine: the greatest of: (i) \$250,000, (ii) twice the gross pecuniary gain from the crime, or (iii) twice the gross pecuniary loss caused to the victim of the crime (18 U.S.C. § 3571(b) and (d)).
- (e) Full restitution, if any, to The Home Depot, Inc., the victim of uncharged conduct referred to in Paragraph 9 of this Plea Agreement.
- (f) Mandatory special assessment: \$100.

5. Application of the Sentencing Guidelines. The defendant understands that, before imposing sentence in this case, the Court will be required to consider, among other factors, the provisions of the United States Sentencing Guidelines. Ultimately, it is within the Court's discretion to impose a sentence up to and including the statutory maximum. The defendant also understands that no one can predict her exact sentence at this time.

6. Guidelines Recommendation. The Government agrees to recommend that the defendant be sentenced to the LOW END of the applicable guidelines range.

- (a) The Government and the defendant agree to advise the Court and the United States Probation Office that the dollar amount to be used under



Sentencing Guideline Section 2T1.1(a)(1) as to the charged offense is \$386,997 for tax year 2005. Additionally, the Government and the defendant agree that the additional amount of tax loss of \$212,937 for tax year 2003 and \$821,981 for tax year 2004 is to be included as uncharged relevant conduct tax loss as to defendant's tax years 2003 and 2004, and that this amount is to be added to the tax loss amounts for the charged offense for Sentencing Guideline purposes yielding a total tax loss for Sentencing Guideline purposes of \$1,421,915; and

(b) The Government will advise the Court and the United States Probation Office that the following adjustments to the Sentencing Guideline Calculation for the charged offense in the Criminal Information should apply; provided, however, that the Government will fully advise the Court and the United States Probation of all facts necessary to the Court's and the Probation Office's determination of whatever other adjustments, if any, to the Guidelines calculation as the Court and the United States Probation Office shall deem appropriate:

- (i) 2T1.1(b)(1)(income derived from criminal activity) - two points;
- and
- (ii) 2T1.1(b)(2)(sophisticated means) - two points.



The defendant shall be free to dispute the application of the aforesaid enumerated Sentencing Guideline points in this Paragraph 6(b) and same would not be interpreted to deprive defendant of acceptance of responsibility.

7. Acceptance of Responsibility. The Government will recommend that the defendant receive the two-level adjustment for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, and the additional one-level adjustment if the offense level is 16 or higher. However, the Government will not be required to recommend acceptance of responsibility if, after entering this Plea Agreement, the defendant engages in conduct inconsistent with accepting responsibility. Thus, by way of example only, should the defendant falsely deny or falsely attempt to minimize her involvement in relevant offense conduct, give conflicting statements about her involvement, fail to pay the special assessment, or participate in additional criminal conduct, including unlawful personal use of a controlled substance, the Government will not be required to recommend acceptance of responsibility.

#### ADDITIONAL PROVISIONS

8. Forfeiture. In light of the benefits of pleading guilty to the violation in the Criminal Information, the defendant hereby waives and abandons all interest in

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1916 Wildwood Place, Mobile, Mobile County, Alabama (“the Wildwood Place property”), \$122,971.75 in proceeds from the consent sale of Lot 43, Heron Lakes, Phase I, Mobile, Mobile County, Alabama (“the Heron Lakes property”), a 2008 Toyota Tacoma Prerunner, VIN 5TEJU62NX8Z485053 (“the Prerunner”), a 2008 Toyota Camry Solara, VIN 4T1FA38P88U137620 (“the Solara”), and a 2007 Toyota Sequoia Limited, VIN 5TDZT38A57S296850 (“the Sequoia”), and the defendant agrees that the forfeiture shall be accomplished in United States v. 900 Carriage Path et al., Civil Action No. 1:07-CV-1955-BBM (N.D. Ga.) and United States v. One 2008 Toyota Tacoma Prerunner et al., Civil Action No. 1:08-CV-1671-TWT, which are presently pending in this Court. In addition, the defendant agrees not to file a Statement of Interest, Answer, Claim, or Petition for Remission for such asset in any judicial proceeding that may be initiated or that has been initiated. To the extent that the defendant has filed a Statement of Interest, Answer, Claim, or Petition for Remission for any such asset, including the Wildwood Place property, the Heron Lakes property, the Prerunner, the Solara, and the Sequoia, the defendant hereby immediately withdraws such filings, including any pleading she has filed in United States v. 900 Carriage Path et al., Civil Action No. 1:07-CV-1955-BBM (N.D. Ga.), United States v. One 2008 Toyota Tacoma Prerunner et al., Civil Action No. 1:08-CV-1671-TWT, and United States

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v. Anthony M. Tesvich, Criminal Information No. 1:08-CR-201-RWS. By entering into this Plea Agreement, the defendant authorizes the Court to enter a civil Judgment and Order of Forfeiture against the Wildwood Place property, the Heron Lakes property, the Prerunner, the Solara, and the Sequoia without further notice to her and waives all defenses to forfeiture as described above, including, the requirements of 18 U.S.C. §§ 983 and 985, Rule 4 of the Federal Rules of Civil Procedure, and Supplemental Rule G(4), regarding notice of seizure in judicial forfeiture matters. In connection with the Wildwood Place property, the government agrees to accept from the defendant the sum of \$178,000.00, as substitute res for the Wildwood Place property, provided the funds are tendered to the government on or before July 1, 2009. The defendant understands and acknowledges that failure to make the payment of \$178,000.00 by the due date will result in the forfeiture of the Wildwood Place property in United States v. 900 Carriage Path et al., Civil Action No. 1:07-CV-1955-BBM (N.D. Ga.). Payment of the \$178,000.00 should be made via a cashier's check made payable to the Department of the Treasury and delivered to the United States Attorney's Office, Attn: Asset Forfeiture Unit.

The defendant agrees to take all steps requested by the Government to pass clear title to the forfeitable assets to the Government, to cooperate truthfully and

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completely with the Government in all matters related to the forfeiture of assets in connection with the facts and circumstances giving rise to this prosecution, and to testify truthfully in any forfeiture proceeding relating to her cooperation.

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, collateral attack, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment.

9. Restitution. The defendant understands and agrees with the Government that in connection with her sentencing in respect to this Plea Agreement the Court may order her to pay full restitution, if any, to The Home Depot, Inc. for her participation in conduct underlying the Criminal Information in United States v. Anthony M. Tesvich, 1:08-CR-201-RWS (N.D. GA. 2008) (hereinafter "Anthony M. Tesvich case"). The defendant understands and agrees the amount of said restitution owed by her to The Home Depot, Inc. will be determined at or before her sentencing and also understands that the Government maintains that the total amount of restitution which would be due The Home Depot, Inc. on account of said Anthony M. Tesvich case is approximately \$8,292,949, and further that the defendant agrees that she owes at least \$264,397.88 in



restitution for her conduct underlying the Criminal Information in said Anthony M. Tesvich case and that the Court may impose restitution against her at her sentencing for her participation in conduct underlying said Anthony M. Tesvich case. The defendant also agrees to cooperate fully in the investigation of the amount of said restitution.

The defendant also agrees to cooperate fully with the Government in the identification of assets to be applied toward restitution in which she has any actual, beneficial, or joint ownership, wherever located, and will execute such documentation, as may be required to locate and secure such assets, as may be deemed necessary by the Government. The defendant's cooperation obligations include fully and truthfully completing the Department of Justice's Financial Statement of Debtor form within ten (10) days of the change of plea hearing; submitting to a financial deposition or an interview or interviews (if necessary) regarding her past and present financial condition as well as that of all members of her household (including but not limited to that of her current husband, former husband, and children), prior to sentencing; providing any documentation requested by the Government regarding her financial condition as well as that of all household members (including but not limited to that of her current husband, former husband, and children); and fully and truthfully answering all

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questions regarding her past and present financial condition in such interview(s).

The defendant also agrees that the full amount of restitution ordered by the Court shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the United States Probation Office at any time, she agrees that the custodial agency and the United States Probation Office will have the authority to establish payment schedules to ensure payment of restitution. The defendant further agrees to cooperate fully in efforts to collect her restitution obligation by set-off of program payments, execution on non-exempt property, and any other means the Government deems appropriate.

The Government will forward a copy of the restitution order to the Chief of the Asset Forfeiture and Money Laundering Section ("AFMLS") of the United States Department of Justice Criminal Division with a written request that property forfeited in the same and/or related civil, criminal or administrative forfeiture proceedings, including the civil forfeiture complaints referenced in Paragraph 8, above, be used to compensate the victim, The Home Depot, Inc., and losses specified in the restitution order, provided that the Government determines that the requirements for restoration as set forth in AFMLS

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Forfeiture Policy Directive 02-1, Paragraph III.A., are met.

10. Federal Income Tax. Defendant agrees to work with the United States Internal Revenue Service to file income tax returns for the tax years 2003-2006, correctly with accurate and truthful information, pay all taxes owing thereon, including penalties and interest thereon, and file all future tax returns truthfully and honestly. Defendant agrees that she will pay in full her outstanding tax liability once assessed, including penalties and interest, or enter into an installment payment plan with the Collection Division of the Internal Revenue Service. If she enters into such an agreement with the Internal Revenue Service, she shall make timely payments and shall abide by the terms of such agreement. Defendant understands that the amount of tax, as calculated by the Internal Revenue Service, may exceed the amount of tax due as calculated for the charged offense and tax years 2003 and 2004. Defendant agrees to cooperate with the Internal Revenue Service in any tax examination or audit of defendant and her current or former husband that directly or indirectly relates to or arises out of the course of conduct defendant has acknowledged in this Plea Agreement, by transmitting to the Internal Revenue Service original records or copies thereof, and any additional books and records that the Internal Revenue Service may request. Nothing in this paragraph precludes defendant from

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asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the Internal Revenue Service.

11. Cooperation. The defendant agrees to cooperate truthfully and completely with the Government, including being debriefed and providing truthful testimony at any proceeding resulting from or related to cooperation. The defendant also agrees to disclose the existence of and to produce to the Government any and all books, papers, documents, tape recordings and other items of evidentiary value that are in her actual or constructive possession wherever located. The defendant understands that the Government alone will determine what forms of cooperation to request from the defendant, and the defendant agrees that she will not engage in any investigation that is not specifically authorized by the Government.

The Government agrees to make the extent of the defendant's cooperation known to the sentencing court. In addition, if the cooperation is completed before sentencing and the Government determines that such cooperation qualifies as "substantial assistance" pursuant to Title 18, United States Code, Section 3553(e) and/or Section 5K1.1 of the Sentencing Guidelines, the Government will consider whether to file a motion at sentencing recommending a downward departure from the applicable guideline range. If the cooperation



is completed after sentencing and the Government determines that such cooperation qualifies as “substantial assistance” pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, the Government will consider whether to file a motion for reduction of sentence. In either case, the defendant understands that the determination as to whether she has provided “substantial assistance” rests solely with the Government. Good faith efforts by the defendant that do not substantially assist in the investigation or prosecution of another person who has committed a crime will not result in either a motion for downward departure or a Rule 35 motion. The defendant also understands that, should the Government decide to file a motion pursuant to this paragraph, the Government may recommend any specific sentence, and the final decision as to what credit, if any, the defendant should receive for her cooperation will be determined by the Court. If the defendant fails to cooperate truthfully and completely, or if the defendant engages in additional criminal conduct or other conduct inconsistent with cooperation, she will not be entitled to any consideration whatsoever pursuant to this paragraph.

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Pursuant to Section 1B1.8 of the Sentencing Guidelines, the Government agrees that any self-incriminating information that was previously unknown to the Government and is provided to the Government by the defendant in connection with cooperation will not be used in determining the applicable Sentencing Guideline range, although such information may be disclosed to the United States Probation Office and the Court. The Government also agrees not to bring additional charges against the defendant, with the exception of charges resulting from or related to violent criminal activity, based on any information provided by the defendant in connection with her cooperation that was not known to the Government prior to the cooperation. However, if the Government determines that the defendant has not been completely truthful and candid in her cooperation with the Government, she may be subject to prosecution for perjury, false statements, obstruction of justice, and any other appropriate charge, and all information she has provided may be used against her in such a prosecution.

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12. No Further Charges. The Government agrees not to bring further criminal charges against the defendant related to the charges to which she is pleading guilty; provided, however, that if the Government should discover evidence not currently known to it that indicates either that defendant has had a violent criminal background or that defendant took substantial additional steps to procure or commit violent criminal acts, the Government is free to prosecute defendant for violent criminal activity whether or not it is related to the charges to which she is pleading guilty. The defendant understands that this provision does not bar prosecution by any other federal, state, or local jurisdiction. The defendant further admits and agrees that venue is proper in the Northern District of Georgia, Atlanta Division as to the offense charged in the Criminal Information.

13. Pre-Payment of Special Assessment. The defendant agrees that, within 30 days of entry of her guilty plea, she will pay a special assessment in the amount of \$100.00 by money order or certified check made payable to the Clerk of Court, U.S. District Court, 2211 U.S. Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303, and that he will provide proof of such payment to the Government within 30 days of the guilty plea.

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14. Right to Inform Court. The Government reserves the right to inform the Court and the United States Probation Office of all facts and circumstances regarding the defendant and this case, and to respond to any questions from the Court and the United States Probation Office and to any misstatements of fact or law. Except as expressly stated elsewhere in this Plea Agreement, the Government also reserves the right to make recommendations regarding application of the Sentencing Guidelines.

15. No Biological Evidence. The parties agree that no biological evidence ( as defined in 18 USC § 3600A) has been identified in this case; therefore, the defendant understands and agrees that no evidence will be preserved for DNA testing.

16. Breach of Plea Agreement. If the defendant fails in any way to fulfill each one of her obligations under this Plea Agreement, the Government may elect to be released from its commitments under this Plea Agreement. The Government may then prosecute the defendant for any and all Federal crimes that she has committed related to this case, including any charges dismissed pursuant to this Plea Agreement, and may recommend to the Court any sentence for such crimes up to and including the maximum sentence. The defendant expressly waives any statute of limitations defense and any constitutional or statutory speedy

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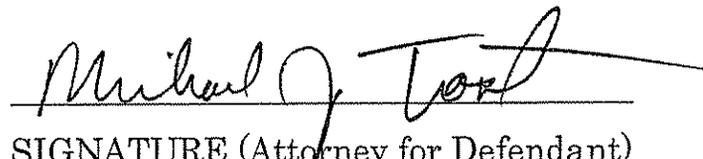
trial defense to such a prosecution, except to the extent that such a defense exists as of the date she signs this Plea Agreement. In addition, the defendant agrees that, in such a prosecution, all admissions and other information that she has provided at any time, including all statements she has made and all evidence she has produced during proffers, interviews, testimony, and otherwise, may be used against her, regardless of any constitutional provision, statute, rule, or agreement to the contrary. Finally, the defendant understands that her violation of the terms of this Plea Agreement would not entitle her to withdraw her guilty plea in this case.

17. Recommendations Non-Binding. The defendant understands and agrees that the recommendations of the Government incorporated within this Plea Agreement or otherwise discussed between the parties are not binding on the Court and that the Court's failure to accept one or more of the recommendations will not constitute grounds to withdraw her guilty plea or to claim a breach of this Plea Agreement.

18. Entire Agreement. There are no other agreements, promises, representations, or understandings between the defendant and the Government.

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In Open Court this 14<sup>th</sup> day of MAY, 2009.



SIGNATURE (Attorney for Defendant)

MICHAEL JOHN TROST

Law Office of Michael J. Trost

Suite 300

1800 Peachtree Street, NW

Atlanta, GA 30309

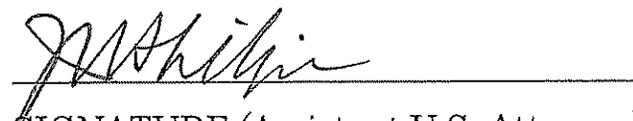
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Georgia Bar. No.: 716685



SIGNATURE (Defendant)

MELISSA DEATON TESVICH



SIGNATURE (Assistant U.S. Attorney)

RUSSELL PHILLIPS, ESQ.

75 Spring Street, S.W.

Suite 600

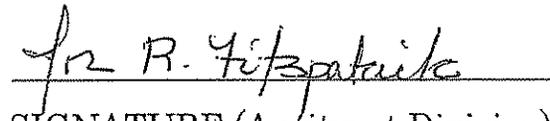
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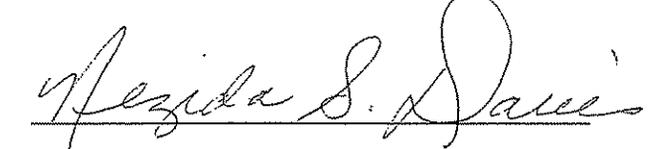
**THIS DOCUMENT IS A DRAFT FOR THE PURPOSE OF DISCUSSION.  
NO PLEA OFFER IS MADE UNTIL AND UNLESS THIS DOCUMENT IS  
SIGNED BY AN APPROVAL OFFICIAL FOR THE UNITED STATES  
ATTORNEY'S OFFICE AND THE ANTITRUST DIVISION.**



SIGNATURE (Approving Official)

RANDY S. CHARTASH

Chief, Economic Crimes



SIGNATURE (Approving Official)

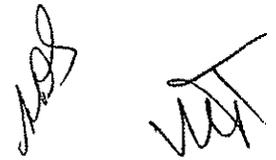
NEZIDA S. DAVIS

Chief, Atlanta Field Office

03-03-09

DATE

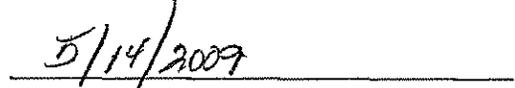
I have read the Criminal Information against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the Government would have to prove to convict me at a trial. I have read the



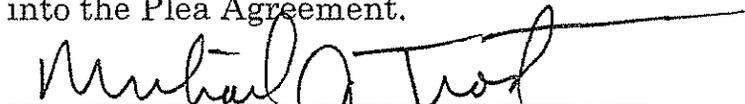
foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my sentence or challenging my sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the Government toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.

  
SIGNATURE (Defendant)

MELISSA DEATON TESVICH

  
DATE

I am MELISSA DEATON TESVICH's lawyer. I have carefully reviewed the charges and the Plea Agreement with my client. To my knowledge, my client is making an informed and voluntary decision to plead guilty and to enter into the Plea Agreement.

  
SIGNATURE (Attorney for Defendant)

MICHAEL JOHN TROST

Law Office of Michael J. Trost  
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Tele: 404.352.9300 - Fax: 404.352.5636  
Georgia Bar. No.: 716685

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Filed in Open Court

\_\_\_\_\_  
By \_\_\_\_\_

*MS* *WJF*