UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 05-60204-CR-HUCK

UNITED STATES OF AMERICA

vs.

ADAM R. KIDAN,
Defendant.
_____/

PLEA AGREEMENT

The United States of America and ADAM R. KIDAN (hereinafter referred to as "the defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to Counts 1 and 4 of the indictment, which charge the defendant with Conspiracy to Commit Wire Fraud and Mail Fraud, in violation of Title 18, United States Code, Section 371 and Wire Fraud, in violation of Title 18, United States Code, Sections 1343 and 2 . The United States agrees to dismiss the remaining counts of the indictment pending against the defendant at time of sentencing.

2. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "the Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that

it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to five (5) years as to each Count of conviction, for a total of ten (10) years' imprisonment, followed by a term of supervised release of up to three (3) years. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to $250,000.00, or twice the gross gain or twice the gross loss from the offense, as to each Count. Additionally, pursuant to Title 18, United States Code, Section 3663A, the Court must order that the defendant make restitution to the victims of the offenses to which he is pleading guilty.

4. The defendant further understand and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of $100.00 as to each Count will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

5. The Office of the United States Attorney for the Southern District of Florida (hereinafter "this Office") reserves the right to inform the Court and the probation office of all facts pertinent to

the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

6. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the Court. The defendant understands further that any recommendation that the government makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and agrees, as previously acknowledged in paragraph 2 above, that the defendant may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

7. The United States agrees that it will recommend at sentencing that the Court reduce by three levels the sentencing guideline level applicable to the defendant's offenses, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, if the defendant's offense level is 16 or greater, or by two levels if the defendant's offense level is less than 16, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. However, the United States will not be required to make this sentencing recommendation if the defendant: (1) fails or refuses to make a full,

accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The United States and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend (1) that the 2000 Sentencing Guidelines Manual, incorporating guideline amendments effective November 1, 2000, is applicable to the defendant's offenses; and (2) that the Court make the following findings and conclusions as to the sentence to be imposed:

(a) Base Offense Level - 6, pursuant to U.S.S.G. Section 2F1.1(a).

(b) Specific Offense Characteristics:

i. Increase by 16 levels because the loss exceeded $20,000,000.00, pursuant to U.S.S.G. Section 2F1.1(b)(1)(Q).

ii. Increase by 2 levels because the offense involved more than minimal planning or a scheme to defraud more than one victim, pursuant to U.S.S.G. Section 2F1.1(b)(2).

iii. Increase by 2 levels because the offense involved sophisticated means, pursuant to U.S.S.G. Section 2F1.1(b)(7).

iv. Increase by 4 levels because the offense affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense, pursuant to U.S.S.G. Section 2F1.1(b)(8)(B).

(c) Overall Guideline Range: That the applicable guideline range under all of the circumstances of the offense committed by the defendant is level 30.

(d) Adjusted Guideline Range: That the guideline range adjusted with the three level reduction for acceptance of responsibility is level 27.

9. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or a variance from the guideline range that the court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with the United States, to request that the District Court enter a specific finding that the defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

10. The defendant agrees that he shall cooperate fully with this Office by:

(a) providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other court proceeding; and

(b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office.

11. This Office reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the Court at the time of sentencing. If, in the sole and unreviewable judgment of this Office, the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the court's downward departure from the advisory sentence calculated under the Sentencing Guidelines, this Office may at or before sentencing make a motion consistent with the intent of Section 5K1.1 of the Sentencing Guidelines prior to sentencing, or Rule 35 of the Federal Rules of Criminal Procedure subsequent to sentencing, reflecting that the defendant has provided substantial assistance and recommending that the defendant's sentence be reduced from the advisory sentence suggested by the Sentencing Guidelines. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require this Office to file any such motion(s) and that this Office's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding insofar as the appropriateness of this Office's filing of any such motion is concerned.

12. The defendant understands and acknowledges that the Court is under no obligation to grant the motion(s) referred to in paragraph 11 of this agreement should the government exercise its discretion to file any such motion. The defendant also understands and acknowledges that the Court is under no obligation to reduce the defendant's sentence because of the defendant's cooperation.

13. If the Court accepts the defendant's plea of guilty and the defendant fulfills each of the terms and conditions of this agreement, the United States agrees that it will not further prosecute the

defendant for crimes disclosed by the defendant in debriefing sessions with attorneys and agents of the United States. Nothing in this agreement is intended to provide any limitation of liability arising out of any acts of violence and/or any solicitation or conspiracy to commit any acts of violence.

14. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Date: 15 Dec 05 By: _____
LAWRENCE D. LaVECCHIO
ASSISTANT UNITED STATES ATTORNEY

Date: 12/15/05 By: _____
PAUL F. SCHWARTZ
ASSISTANT UNITED STATES ATTORNEY

Date: 12-15-05 _____
ROBERT P. LaRUSSO and
JONATHAN H. ROSENTHAL
ATTORNEYS FOR DEFENDANT

Date: 12-15-05 _____
ADAM R. KIDAN
DEFENDANT