

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	No. 09 CR 144-1
vs.)	Judge Virginia Kendall
)	
MARVIN BERKOWITZ)	

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant MARVIN BERKOWITZ, and his attorneys, CARL CLAVELLI and BARRY SPECTOR, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The superseding indictment in this case charges defendant with conspiracy to impede the functions of the Internal Revenue Service ("IRS") and to commit mail and wire fraud, in violation of Title 18, United States Code, Section 371 (Count 1), wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts 2-5 and Counts 49-51); mail fraud, in violation of Title 18, United States Code, Section 1341 (Counts 6-35 and Counts 42-48), and aggravated identity theft, in violation of Title 18, United States Code, Section 1028A (Counts 36-41).

3. Defendant has read the charges against him contained in the superseding indictment, and those charges have been fully explained to him by his attorneys.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following counts of the superseding indictment: Count 1, which charges defendant with conspiring to impede the functions of the IRS and to commit mail and wire fraud, in violation of Title 18, United States Code, Section 371 and Count 11, which charges defendant with mail fraud, in violation of Title 18, United States Code, Section 1341. In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts 1 and 11 of the superseding indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline §1B1.3, and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

a. With respect to Count One of the superseding indictment:

Beginning no later than in or around 2003, and continuing to on or around August 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant MARVIN BERKOWITZ (hereinafter, "BERKOWITZ") did conspire and agree with Yair Berkowitz, David Berkowitz, Eric Berkowitz, Fernando Benalcazar, Marvin Harris, Christopher Moore, Kevin Murray, Israel Michael Zygmant, Yosef Lefkowitz,

Franklin Novak, and others known and unknown to commit offenses against the United States, namely:

(a) to defraud the United States by impeding, impairing, obstructing and defeating the lawful government functions of the IRS of the Department of Treasury, an agency of the United States, in the ascertainment, computation, assessment and collection of the revenue, namely income taxes, in violation of Title 18, United States Code, Section 371; and

(b) to devise, intend to devise and participate in a scheme to defraud the IRS and numerous state departments of revenue of money and property, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and it was foreseeable that for purposes of executing and attempting to execute such scheme one or more members of the conspiracy would use and cause the use of the United States Postal Service and private and commercial interstate carriers, and the transmission of wire communications in interstate and foreign commerce, in violation of Title 18, United States Code, Sections 1341 and 1343.

Evidence of the Conspiratorial Agreement and the Overt Acts committed by the Defendant and his Co-Conspirators

Specifically, beginning in at least 2003 and continuing until August 3, 2009, Berkowitz directed a conspiracy and scheme in which he filed and caused to be filed thousands of fraudulent state tax returns and federal income tax return forms 1040, using the names and social security numbers of federal inmates and deceased persons without the inmates' or the decedents' representatives' knowledge or permission. The tax returns were

entirely false, in that the prisoner or decedent had not earned the claimed income and was not entitled to the claimed deductions and/or tax credits, had not authorized the submission of the return, and were not entitled to the tax refunds claimed in the tax returns. The fraudulent returns indicated that the refund should either be: (a) mailed to addresses which were not associated with the inmate or decedent's representative, but addresses that corresponded to those controlled by individuals working for Berkowitz; or (b) direct-deposited into bank accounts not controlled by the inmate or decedent's representative, but controlled by individuals working for Berkowitz. The false federal income returns were submitted to the Internal Revenue Service, an agency of the United States Treasury Department, and the false state income tax returns were submitted to the taxing authorities for at least 28 states.

Berkowitz began this scheme while under investigation by the IRS for a separate tax fraud scheme involving Berkowitz, and his co-conspirators in that scheme, filing false and fraudulent tax returns with the IRS using personal information of deceased individuals and through the unauthorized use of the personal information of unsuspecting individuals who had consented to allow Berkowitz and his co-conspirators to file their tax returns. Berkowitz ultimately left the United States in January 2003 and traveled to Israel in order to avoid prosecution related to his participation in that scheme. Berkowitz knew he was indicted in February 2003 on charges arising from the scheme. Berkowitz knew that his eldest son Yehuda Berkowitz, as well as others, were indicted along with him, and that Yehuda Berkowitz pled guilty to assisting Berkowitz in the scheme and was sentenced to 15 months' incarceration in *United States v. Marvin Berkowitz et al*, 03 CR 127 (J. Gottschall.)

To perpetrate the scheme that is the subject of the instant charges, Berkowitz recruited his son Yair Berkowitz, as well as Individuals A and B, to obtain the personal identifying information of federal inmates from the judgment and conviction (J&C) orders on file in federal courthouses across the United States. At that time, J&C orders listed, along with the name of a prisoner, that prisoner's date of birth, social security number, and address. In particular, Berkowitz, who falsely represented to Individual A that he was an attorney, instructed Individual A to look specifically for, and obtain the J&C's of, inmates who had committed drug and bank crimes, but not financial or mail fraud crimes, and who had been sentenced between 2001 and 2003. Berkowitz subsequently directed Individuals A and B to send him copies of the J&Cs in Israel. Berkowitz used the names and social security numbers of the prisoners in order to file and cause to be filed both federal and state income tax returns claiming refunds.

Berkowitz also researched obituaries online and obtained the personal identifying information of various deceased individuals, in whose names he filed and caused to be filed federal and state income tax returns claiming refunds. In some cases, Berkowitz filed and caused to be filed federal and state income tax returns using a deceased individual and a federal prisoner as a married couple filing jointly. Finally, Berkowitz used the names and personal identifying information of some of the individuals he recruited to work for him and their family members in order to file and caused to be filed false and fraudulent federal tax returns in their names.

Berkowitz utilized public online access to federal court records (the "PACER" system) to search federal district court and bankruptcy court records in order to obtain information concerning bankrupt companies and personal information of debtors and federal prisoners for use in preparing the fraudulent federal and state tax returns.

Berkowitz intended that his submission of false and fraudulent tax returns to the IRS and state taxing agencies would cause the IRS and state taxing agencies to issue tax refunds and direct those refunds, either by United States mail or by interstate wire transfer, to the addresses and/or bank accounts specified by Berkowitz on the false and fraudulent returns as the purported taxpayer address and/or bank account.

Berkowitz prepared the majority of the false and fraudulent federal and state tax returns himself. He also recruited two tax preparers, Individuals C and D, to prepare and submit some of the false and fraudulent federal and state tax returns electronically, using information Berkowitz provided them. Berkowitz falsely represented to Individuals C and D that the tax returns pertained to his clients overseas, and provided false and fictitious IRS Forms 8453, purporting to be authorizations on behalf of his clients to permit Individuals C and D to file federal tax returns electronically.

Berkowitz forged the signatures of the purported taxpayers on the federal and state tax returns. He then mailed packages from Israel containing stamped envelopes, addressed to the IRS and state taxing agencies, and containing the false and fraudulent federal and state tax returns he prepared, to individuals working for him in the United States. Berkowitz

instructed those individuals to mail the envelopes from different mailboxes in order to avoid raising suspicion at the IRS and state taxing agencies.

Berkowitz directed at least 58 individuals, who controlled at least 90 different addresses and at least 42 different bank accounts in the United States, to receive federal and state tax refund checks in the mail and by direct deposit into bank accounts. Berkowitz then instructed these individuals to distribute the proceeds of the scheme by: (1) mailing federal and state tax refund checks to Berkowitz and his co-conspirators in Israel; and (2) utilizing the funds resulting from the deposit of tax refunds to pay individuals involved in the conspiracy, and to deliver cash to, mail checks or wire money to, and pay the debts of, Berkowitz's family members, including Yair Berkowitz, Eric Berkowitz, David Berkowitz, as well as Berkowitz's wife, eldest son and two daughters. Berkowitz's family members received proceeds by check or wire transfer, either directly or through the payment of their debts and expenses, in the amount of at least \$1.5 million dollars, exclusive of the thousands of dollars of cash which Berkowitz mailed directly to his family members from Israel or caused to be delivered to his family members by other co-conspirators and individuals working for Berkowitz.

Many of Berkowitz's recruits were individuals for whom Berkowitz had previously prepared income taxes, in direct violation of a permanent injunction entered against Berkowitz on July 25, 1984, in *United States v. North American Investment Group et al*, 84 C 3683, which prohibited Berkowitz from acting, directly or indirectly, as a tax preparer. Berkowitz variously misrepresented to a number of these individuals that he was a tax

preparer, a certified public accountant, a rabbi, an attorney, and/or that he operated a tax preparation business similar to H&R Block or Jackson-Hewitt. In some cases, Berkowitz provided these individuals with letters purporting to confirm that Berkowitz was employed by a company managing the tax returns of clients stationed in the Middle East, as well as with documents purporting to be powers of attorney authorizing Berkowitz, or Berkowitz's co-conspirators, to act on behalf of the taxpayer.

Berkowitz first asked individuals he recruited to receive federal and state tax refunds and tax-related mail at addresses they controlled or to receive federal and state tax refund direct-deposits in bank accounts that they controlled. Later, as Berkowitz worked with the individual, he requested that they obtain additional addresses, either by providing Berkowitz with the addresses of friends and relatives or by opening up post office boxes or renting offices, the fees for which were paid by Berkowitz. Berkowitz also requested that individuals he worked with open up corporations, for which Berkowitz provided the requisite paperwork and filing fees, and then open post office boxes and bank accounts in the names of those corporations. The corporations had no other purpose other than to receive federal and state tax refunds and distribute the proceeds.

When Berkowitz learned from his co-conspirators, including Franklin Novak, Kevin Murray, Fernando Benalcazar, and Marvin Harris, as well as other individuals working for Berkowitz, that a particular address or post office box ceased receiving mail, or was closed by the Postal Service, Berkowitz asked his co-conspirators and the individuals working for him to find additional addresses and/or open new post office boxes. If a bank account was

closed by a bank for suspicious activity, Berkowitz asked his co-conspirators and the individuals working for him to open additional bank accounts. Berkowitz continuously sought new addresses for use in the scheme and new individuals who would consent to receiving mail or direct deposits in their bank accounts. Berkowitz discussed with an individual who, unbeknownst to Berkowitz, was an undercover IRS agent, the possibility of expanding the reach of the scheme by exploiting the UCA's purported "contacts" working in the banking system to cash the false and fraudulent state and federal tax refund checks and by obtaining the personal information, including social security numbers, of senior citizens in Florida nursing homes to use in submitting additional false and fraudulent federal and state tax returns.

Berkowitz directed the individuals working for him to distribute the proceeds in a variety of ways:

First, Berkowitz directed individuals who received federal and state tax refund checks in the mail to: (1) mail or deliver the refund checks, or proceeds of the refunds, to one of his co-conspirators, including Fernando Benalcazar, Yair Berkowitz, Eric Berkowitz, Yosef Lefkowitz, Christopher Moore, or Kevin Murray; or (2) to mail the refund checks to Berkowitz at an address in Israel which Berkowitz represented to be a law firm with whom he was working, but was, as Berkowitz well knew, only a mail drop. The address to which Berkowitz directed the majority of the federal and state refund checks be sent was that of Law Firm A, a legitimate law firm located in Jerusalem, Israel. Berkowitz told individuals working for him to mail the federal and state tax refunds and mail by Federal Express to

“Garfinkel Berkowitz Abramson” along with the street address of Law Firm A, in order to persuade individuals working for him that Berkowitz was a lawyer with a legitimate business. Berkowitz was not a lawyer or employee of the Law Firm A, instead, Berkowitz was acquainted with a partner and a secretary who worked at the firm and who agreed to receive packages for Berkowitz. Berkowitz also collected packages of federal and state refund checks sent by individuals recruited by Novak, at Novak’s direction, to Law Firm A, to another address controlled by Berkowitz in Jerusalem, and to Franklin Novak’s home address in Jerusalem.

Second, Berkowitz directed some of the individuals working for him, including co-conspirators Christopher Moore, Israel Michael Zygmant, Fernando Benalcazar, and Yosef Lefkowitz, to cash the federal and state tax refund checks by forging the payee’s endorsement. In particular, Berkowitz recruited Yosef Lefkowitz to cash federal and state tax refund checks through a currency exchange in Brooklyn, New York.

Third, Berkowitz directed Benalcazar, Harris, Novak, Moore, Murray, and individuals working for Berkowitz who received direct deposits of federal and state tax refunds in their account, and/or who cashed federal and state tax refund checks in their accounts, to write checks or wire money out of those accounts. Berkowitz directed that some checks be written, or wires sent, to pay other individuals for their participation in the scheme, while other checks were written directly, or wires sent, to Berkowitz’s family members or to satisfy his family members’ expenses and debts. Finally, Berkowitz directed some individuals working for him to write a check to themselves from an account receiving direct deposits of federal

and state tax refunds, cash the check, and deliver the cash to Berkowitz's family members.

Finally, Berkowitz paid the individuals working with him by mailing U.S. currency to those individuals in packages from Israel using the Israeli and U.S. postal services, by directing that other individuals working for Berkowitz mail them what Berkowitz described as "commission" checks or personally deliver cash, and/or by directing the individual working for him to take a certain percentage of the funds in bank accounts which received proceeds as their pay.

Berkowitz relied upon Franklin Novak, Yair Berkowitz, Fernando Benalcazar, and Yosef Lefkowitz to manage his relationships with the many individuals accepting federal and state tax refunds for Berkowitz. Novak, Yair Berkowitz, Lefkowitz, and Benalcazar coordinated the collection of federal and state tax refunds and the payment of funds to Berkowitz's family. Berkowitz directed Benalcazar and Kevin Murray to pick up and deliver federal and state tax refund checks between individuals working for Berkowitz in the Chicago area, and to issue checks payable to individuals working for Berkowitz. Berkowitz directed Yair Berkowitz to pay individuals working for Berkowitz, to pick up tax refund checks, and to pick up checks and cash from individuals and co-conspirators whom Berkowitz directed to give money to Yair Berkowitz for Yair Berkowitz's personal use. Novak managed his own network of individuals whom Novak paid, but who answered to Novak and Berkowitz concerning matters of transferring proceeds and/or mailing tax refund checks. Berkowitz directed Lefkowitz to transmit the proceeds of checks cashed at currency exchanges to Berkowitz and Berkowitz's family members, including Eric Berkowitz. At

Berkowitz's direction, Lefkowitz also mailed cash in packages to Berkowitz's family members in Chicago and California.

Berkowitz cashed, and caused to be cashed, the federal and state tax refund checks he received in Israel in Israeli banks and currency exchanges. Berkowitz also recruited Attorneys A and B in Israel to open and maintain trust accounts at various banks in the names of Berkowitz's family members, into which Berkowitz deposited and caused to be deposited, tax refund checks he obtained in the scheme. Berkowitz used the funds for his own benefit, invested in Israeli real estate, purchased stock in his and his family members' names, and mailed packages of cash to his family members and individuals working with him in the United States. In addition, Berkowitz applied some of the cash proceeds of the scheme to wire transfers, which he sent or caused to be sent to bank accounts held by his family members or to bank accounts pertaining to companies to which his family members owed debts. Berkowitz typically arranged for proceeds of the scheme to be wire-transferred from various third party bank accounts in order to conceal the source and nature of the funds.

In addition, Berkowitz and his wife planned twice-yearly vacations for themselves and their family in Israel, including a planned two week trip in October 2009 for themselves, David Berkowitz, Eric Berkowitz and his wife (Berkowitz's daughter) and children, and their other daughter, her husband, and their children. The total cost of this trip was \$68,976. On or about July 29, 2009, Berkowitz wired \$44,909.70 funds from a bank account held at Mizrahi Tefahot bank in Israel, held in the name of Individual P, as trustee for David Berkowitz, and containing proceeds of the scheme, to the bank account of Eshet Travel, an

Israeli tour company contracting with Best of Israel Travel, a U.S. based tour company, as partial payment for the trip.

Berkowitz acknowledges that during the course of the conspiracy and scheme, he submitted and caused to be submitted at least 4,500 fraudulent and false federal and state tax returns in the names of at least 2,900 prisoners and deceased individuals to the IRS and state taxing agencies, claiming at least \$54 million in refunds due and owing. Further, Berkowitz acknowledges that the submission of these fraudulent and false federal and state tax returns caused the IRS and state tax agencies to issue at least \$4.5 million in fraudulently obtained tax refunds.

b. With respect to Count 11 of the superseding indictment:

On or about February 1, 2009, in the Northern District of Illinois, and elsewhere, BERKOWITZ, for the purpose of executing the above-described scheme and attempting to do so, did knowingly cause to be deposited for delivery with Federal Express, an interstate commercial carrier, and sent according to the directions thereon, a package from Skokie, Illinois, addressed to “Garfinkel, Berkowitz and Abramson Law Office, Beit Hatayelet, 2 Beiter Street, Floor 3, Jerusalem, Israel, 93386,” which package contained tax refund and stimulus checks, including a check issued by the IRS, payable to Prisoner CC in the amount of \$1,200, in violation of Title 18, United States Code, Sections 1341 and 2.

Specifically, on or about February 1, 2009, at Berkowitz’s direction, co-conspirator Marvin Harris deposited with Federal Express a package directed to Berkowitz at “Garfinkel, Berkowitz, and Abramson Law Office, Beit Hatay Elet, 2 Beiter Street, Floor 3, Jerusalem,

Israel.” This package contained, among other things, letters from various state taxing agencies and the IRS in a variety of names, and 11 unendorsed state and federal refund checks totaling \$29,119, which Harris had received at addresses Harris controlled and from Individual Q, an individual working for Berkowitz, at an address that Individual Q controlled. Harris included in this package a sheet of notebook paper, upon which he itemized the names and dollar amounts corresponding to the enclosed federal and state refund checks he had received at addresses he controlled, and the checks which Individual Q had received, as well as a calculation of 10% of the sum of the dollar amounts of the checks. Berkowitz typically promised his co-conspirators and individuals working with him that they would be paid 10% of the total amount of tax refund checks they received for Berkowitz. Finally, the paper contained in the February 1, 2009, package also contained a notation that Harris had given “Yari” [Yair Berkowitz] \$11,000.

Berkowitz prepared, submitted, and caused to be submitted the federal and state tax returns which resulted in the issuance of the 11 tax refund and stimulus checks enclosed in the package. Of those 11 checks, 6 were issued in the names of 5 federal prisoners whose personal identifying information Berkowitz stole and used in order to submit false and fraudulent tax returns claiming refunds in their names, and directing that the refunds be mailed to addresses controlled by Marvin Harris and Individual Q.

Maximum Statutory Penalties

7. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Count 1 carries a maximum sentence of 5 years' imprisonment. Count 1 also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count 1 the judge also may impose a term of supervised release of not more than three years.

b. Count 11 carries a maximum sentence of 20 years' imprisonment. Count 11 also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count 11, the judge also may impose a term of supervised release of not more than three years.

c. Defendant further understands that the Court must order restitution to the victims of the offenses in an amount determined by the Court.

d. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty or restitution imposed.

e. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 25 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$500,000, or twice the gross gain or gross loss resulting from the offenses of conviction, whichever is greater, a period of supervised release, and special assessments totaling \$200, in addition to any restitution ordered by the Court.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2010 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level for the charge in Count One of the superseding indictment is determined pursuant to Guideline §2T1.9, which directs the use of the offense level determined by reference to Guidelines §2T1.1 or 1.4. Thus, the base offense level for the charge in Count One of the superseding indictment is 30, pursuant to Guideline §2T1.1(a)(1) and §2T4.1(M), because the amount of intended tax loss involved in the offense and relevant conduct is at least \$54 million dollars, which is more than \$50 million dollars but less than \$100 million dollars;

ii. Defendant's offense level is increased by two levels, pursuant to Guideline §2T1.1(b)(2), because the offense involved sophisticated means.

iii. Defendant's offense level is increased by four levels, pursuant to Guideline §3B1.1(a), because defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive;

iv. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline §3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level will be appropriate.

v. The parties agree that defendant is not eligible for an additional one-level reduction in the offense level pursuant to Guideline §3E1.1(b).

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government and stipulated below, defendant's criminal history points equal 6 and defendant's criminal history category is III:

I. On or about November 10, 1977, defendant was convicted in the Circuit Court for Lake County, Indiana, of uttering a forged instrument, and was sentenced to two years' probation. Pursuant to Guideline §4A1.2(e), defendant does not receive any criminal history points for this conviction.

ii. On or about May 26, 1989, defendant was convicted of obstruction of justice and theft of government property in the United States District Court for

the Northern District of Illinois and was sentenced to 63 months' imprisonment. Pursuant to Guideline §4A1.1(a), defendant receives three criminal history points for this conviction.

iii. On or about January 8, 1990, defendant was convicted of conspiracy to defraud the United States and tax fraud in the United States District Court for the Northern District of Illinois and sentenced to 5 years' imprisonment, to run concurrently with the sentence described above in subsection (c)(ii). Pursuant to Guideline §4A1.1(a), defendant receives three criminal history points for this conviction.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, and assuming that the Court determines that defendant has accepted responsibility within the meaning of §3E1.1, the anticipated offense level is 34, which, when combined with the anticipated criminal history category of III, results in an anticipated advisory Sentencing Guidelines range of 188 to 235 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline

calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this plea agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. The government is free to recommend whatever sentence it deems appropriate within the applicable guidelines range.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Regarding restitution, defendant acknowledges that the total amount of restitution owed to the IRS and state taxing agencies will be determined by the Court at

sentencing, but at no event will be less than \$4.5 million, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant, together with any jointly liable co-defendants, to make full restitution in the amount outstanding at the time of sentencing. Defendant agrees, pursuant to Title 18, United States Code, § 3663A(3), to pay restitution as determined by the Court at sentencing.

13. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k) he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

14. The parties further agree that \$4500 that defendant paid to the undercover agent during the course of the investigation shall be applied towards his restitution obligation.

15. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

16. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the superseding indictment as to defendant Marvin Berkowitz. The government will also move, after sentence has been imposed, to dismiss the indictment pending against defendant in *United States v. Marvin Berkowitz et al*, 03 CR 127.

Forfeiture

17. The superseding indictment charges that defendant is liable to the United States for approximately \$5,000,000, which funds are subject to forfeiture because those funds constitute proceeds of the violations alleged in Counts 1-51.

18. As set forth below, the parties acknowledge that certain property located in Israel is titled in defendant Marvin Berkowitz's name, or in the name of his family members, or in trust for his beneficial interest, or the beneficial interest of his family members, which specifically includes funds contained in accounts at financial institutions in Israel and Israeli real estate owned in the name or for the benefit of defendant or his family members (hereinafter collectively referred to as "Israeli Funds").¹

19. Defendant hereby acknowledges that all such Israeli Funds are the proceeds of the criminal activity charged in Count 1 and agrees to the forfeiture of any such Israeli Funds. At sentencing, defendant shall agree to the entry of a preliminary order of forfeiture relinquishing any right of ownership he has in the Israeli Funds and further agrees to the seizure and forfeiture of these funds so that these funds may be disposed of according to either United States or Israeli law.

¹ The parties exclude from the definition of "Israeli Funds" shares of stock in Immunovative Therapies.

20. Defendant further agrees to cooperate with both the United States and Israel during any stage of proceedings conducted in either Israel or the United States to effectuate the forfeiture of the Israeli Funds, or the proceeds from the sale of such property, and to defeat the claim of any third-party to the Israeli Funds in the event such claims are asserted. Defendant further agrees to cooperate with both the United States and the State of Israel to execute any documents or take any other steps reasonably necessary to effectuate or assist in the transfer to the United States or to the State of Israel of his interest in any Israeli Funds which either the United States or the State of Israel alleges are subject to forfeiture, or Israeli Funds that have been frozen or are otherwise subject to forfeiture in Israel, including but not limited to Israeli Funds that are in trust for the benefit of defendant or his family members. Defendant further understands that while forfeiture of property is not typically treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose, it is agreed by the parties that any payments made to the United States from the Israeli Funds shall be credited towards the satisfaction of the forfeiture judgment in this case.

21. Furthermore, defendant waives any attorney-client privilege that may apply under the law of the United States or Israel between defendant and any Israeli attorney, including but not limited to Yakov ("Jacob") Abrahams, with regard to information that the attorney may have relating to the location of the Israeli Funds or to the forfeiture of those Funds. In addition, the United States Marshals Service or the Israel National Police, or any other United States or Israeli government agency, is hereby authorized to take possession of any interest defendant or his family members have in the Israeli Funds, either directly in his

name, or his family members' names, or for his benefit, or for his family members' benefit, in order to cause those Israeli Funds and assets to be forfeited to either the State of Israel or the United States, or transmitted to the United States for the benefit of the victims of the scheme to defraud.

22. Defendant understands if he refuses to cooperate and assist the State of Israel or the United States in the forfeiture of the Israeli Funds there will be no reduction in the base offense level for acceptance of responsibility, if the court finds that a reduction for acceptance is otherwise appropriate, and his refusal to cooperate shall be deemed to violate this plea agreement. Defendant further understands that any attempt on the part of defendant to transfer, convey or otherwise conceal property or funds in which defendant has an interest in Israel prior to the satisfaction of any judgment in this case shall also be deemed to violate this plea agreement. If such conveyances are discovered prior to the imposition of sentence, the defendant understands that there will be no reduction in the base offense level for acceptance of responsibility.

23. Further, defendant has subjected real and personal property to forfeiture, namely:

a. \$41,903.17 in the form of a cashier's check from Citibank N.A. from bank account ending in X1215 and held in the name of Best of Israel, LLC;

b. all funds contained in account number X1614 held at Charter One Bank in the name of Mi Casa Recovery;

c. all funds contained in account number X5807 held at Fifth Third Bank in the name of Mi Casa Recovery;

d. all funds contained in account number X0455 held at Bank of America in the name of Mi Casa Developers;

e. all funds contained in account number X4509 held at Bank of America in the name of Mi Casa Recovery; and

f. funds in the amount of \$4,488.86 seized on November 14, 2008 from TCF Bank account X7323 held in the name of Marvin Harris;

which represent proceeds of the scheme, because that property is proceeds of the violations alleged in Count 1-51. By entry of a guilty plea to Counts 1 and 11 of the superseding indictment, defendant acknowledges that the property identified above is subject to forfeiture.

24. Defendant agrees to the entry of a forfeiture judgment in the total amount of \$4.5 million, including against the funds identified above, in that these funds are subject to forfeiture. Prior to sentencing, defendant agrees to the entry of a preliminary order of forfeiture relinquishing any right of ownership he has in the above-described funds and further agrees to the seizure of these funds so that these funds may be disposed of according to law. The Israeli Funds that are ultimately forfeited to the United States will be credited towards the satisfaction of this forfeiture judgment.

25. Defendant understands that forfeiture of this property, with the exception of the forfeiture of the Israeli Funds, as described above in paragraph 19, shall not be treated

as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon defendant in addition to the forfeiture judgment.

26. Defendant further acknowledges that on or about June 7, 2010, administrative forfeiture proceedings were commenced against certain property, namely \$41,903.17 in the form of a cashier's check from Citibank N.A. from bank account ending in X1215 and held in the name of Best of Israel, LLC (AFTRAK Number 36100053.) Defendant relinquishes all right, title, and interest he may have in this property, and further agrees to withdrawal of all claims to said funds, and understands that declarations of forfeiture have been or will be entered, extinguishing any claim he may have had in the seized property.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

27. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 09 CR 144.

28. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

29. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest or penalties from defendant and his spouse.

Waiver of Rights

30. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after

hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the superseding indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may

only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

31. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

32. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline §3E1.1 and enhancement of his sentence

for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

33. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

34. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

35. Regarding matters relating to the Internal Revenue Service (IRS), defendant agrees as follows (nothing in this paragraph, however, precludes defendant and his spouse

from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS):

a. Defendant agrees to cooperate with the Internal Revenue Service (IRS) in any tax examination or audit of defendant and his spouse which directly or indirectly relates to or arises out of the course of conduct which defendant has acknowledged in this Plea Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and records which the IRS may request.

b. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure to the Internal Revenue Service (IRS) of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed.R.Crim.P. 6(e)(3)(E)(I). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the IRS for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant and his spouse.

Conclusion

36. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

37. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

38. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

39. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

40. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

PATRICK J. FITZGERALD
United States Attorney

MARVIN BERKOWITZ
Defendant

CHARLES E. EX
MAUREEN E. MERIN
DYLAN SMITH
Assistant U.S. Attorneys

CARL CLAVELLI
Attorney for Defendant

BARRY SPECTOR
Attorney for Defendant

