

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 10 CR 50043
)
) Judge Philip G. Reinhard
)
JON C. SHAIN)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant JON C. SHAIN, and his attorney, JAMES T. ZUBA, 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 second superseding indictment in this case charges defendant with bank fraud, in violation of Title 18, United States Code, Section 1344 (Counts 1, 6, 8, 12, 14, 18, 19), false statements to a financial institution, in violation of Title 18, United States Code, Section 1014 (Counts 2, 7, 9, 13, 15), and money laundering, in violation of Title 18, United States Code, Section 1957(a)(Counts 3, 4, 5, 10, 11, 16, 17).

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

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 second superseding indictment: Count One, which charges defendant with bank fraud, in violation of Title 18, United States Code, Section 1344; Counts Three, Sixteen and Seventeen, which charge defendant with money laundering, in violation of Title 18, United States Code, Section 1957(a). 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 One, Three, Sixteen and Seventeen of the second superseding indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt, and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

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

Generally, defendant admits that beginning in the late summer of 2004, he devised and intended to devise a scheme to defraud and to obtain money from Amcore Bank (“Amcore”), by means of materially false and fraudulent pretenses, representations and omissions.

Specifically, defendant admits that during the late summer and early fall of 2004, defendant sought a loan from Amcore to purchase a building and equipment for use in starting a business to coat metal parts. Shain incorporated the business named Coating Technologies, Inc. (“Coating”) in Illinois on October 22, 2004. At all times during the

existence of Coating, the defendant served as its only officer and director. Amcore granted an \$884,000 loan to Coating on November 24, 2004 to enable Coating to purchase a building and equipment.

The defendant was advised by Amcore that Coating could obtain the proceeds of the loan through the submission of documents known as "Settlement Sheets," which were generally required to be accompanied by invoices, receipts, or similar documents as proof of equipment purchases by Coating. After receipt of a proper Settlement Sheet, Amcore paid the appropriate amount of loan proceeds to the party that had sold equipment to Coating. Alternatively, if Coating had already paid for the equipment when it submitted a Settlement Sheet, Amcore paid the appropriate amount of loan proceeds to Coating.

After Amcore's approval of the loan, the defendant submitted Settlement Sheets with attachments that included false and fraudulent invoices and other documents to Amcore on June 16, 2005, July 22, 2005, and August 22, 2005. The Settlement Sheets and attachments contained false and fraudulent representations regarding the purchase and purchase prices of various equipment and related services by Coating. Amcore made the disbursement of the loan funds requested in the Settlement Sheets.

Among the invoices that the defendant created were invoices that represented Coating had purchased equipment from Industrial Equipment Supply Co., and listed a false address for Industrial in Elgin, Illinois. "Industrial Equipment Supply Corp." and "Industrial Equipment Supply Co." were trade names used by the defendant beginning no later than November 2004 and lasting until September 2005 when the defendant created an Illinois

corporation named “Industrial Equipment Supply Corporation.” Defendant used the false Elgin address and did not disclose to his personal relationship with Industrial to Amcore for the purpose of concealing his ownership of Industrial from Amcore and thereby avoiding any further inquiries by Amcore into the facts surrounding Coating’s purchases of equipment from Industrial.

Also among the false and fraudulent invoices created by the defendant were invoices that represented Coating had purchased equipment and services from “Qualified Industrial Services” (“Qualified”). The invoices contained a Patrick, South Carolina, address for Qualified. Qualified had no business of any kind. Qualified was a sham device used by the defendant to execute his scheme to defraud Amcore. Defendant chose the name and address because it was deceptively similar to the name and address of “Qualified Industrial Rigging Services,” an actual business located in Patrick, South Carolina with which the defendant had transacted business.

On approximately February 23, 2006, Coating and an unrelated business named Barron Industries, Inc. combined to do business as Barron Finishing Technologies, Inc. (hereafter “Finishing”), an Illinois corporation created and owned by a partnership that included the defendant. The defendant served as Finishing’s President. In early 2006, the partnership obtained Amcore loans of more than \$2,000,000 to purchase real estate and equipment for Finishing.

On approximately February 28, 2006, the defendant submitted a Settlement Sheet with attachments that included false and fraudulent invoices and other documents to Amcore for

the purpose of drawing proceeds from the Amcore loans to the partnership and Finishing. The settlement sheet sought a draw of \$207,300. On approximately the same date, the defendant submitted another fictitious invoice without a Settlement Sheet for the purpose of obtaining a draw of \$200,000 from the partnership and Finishing loans. The additional invoice used the name Qualified Industrial Services of Patrick, South Carolina as the seller of equipment to Coating Technologies, Inc.

Defendant submitted the false and fraudulent settlement sheets and invoices for the purpose of drawing hundreds of thousands of dollars more than the cost of actual purchases of equipment by Coating and Finishing. Defendant used the loan proceeds to acquire real estate that was not permitted by the terms of any of the Amcore loans.

During the period from January 1, 2004 through December 31, 2010, the accounts of Amcore Bank were insured by the Federal Deposit Insurance Corporation.

b. With respect to Count Three of the second superseding indictment:

Generally, defendant admits he knowingly engaged in a monetary transaction in and affecting interstate commerce, in criminally derived property of a value greater than \$10,000, in that he issued a Qualified Industrial Services check with the number 1001, drawn on the Chase Bank account with the account number ending in 7327, in the amount of \$134,500, and payable to Industrial Equipment Supply Co., knowing that the money in the account from which the \$134,500 was drawn had been derived from a specified unlawful activity, namely the bank fraud charged in Counts One, Six, Eight, Twelve and Fourteen and

described in sub-paragraph a above, in violation of Title 18, United States Code, Section 1344.

Specifically, defendant admits that after having deposited part of the proceeds from his execution of the bank fraud scheme described in sub-paragraph a above into a Qualified Industrial Services Chase Bank account that had an account number ending in 7327, he issued check number 1001 on the account in the amount of \$134,500, and payable to Industrial Equipment Supply Co. The defendant further admits that he later used the proceeds of the check, in part, to purchase the real property commonly known as 4750 Hydraulic Road, Rockford, Illinois, which he purchased in the name of Industrial Equipment Supply Corp. At all times during its existence, the defendant alone controlled all activity of Industrial Equipment Supply Corp. and no legitimately acquired monies of Industrial were used in the purchase of the 4750 Hydraulic Road property.

c. With respect to Count Sixteen of the second superseding indictment:

Generally, defendant admits he knowingly engaged in a monetary transaction in and affecting interstate commerce, in criminally derived property of a value greater than \$10,000, in that he withdrew \$68,000 from the Industrial Equipment Supply Corp. account at Harris Bank with the number ending in 2887 to purchase Harris Official Check No. 61225592, payable to himself, knowing that the money in the account from which the \$68,000 was drawn had been derived from a specified unlawful activity, namely the bank fraud charged in Counts One, Six, Eight, Twelve and Fourteen and described in sub-paragraph a above, in violation of Title 18, United States Code, Section 1344.

Specifically, defendant admits that having deposited part of the proceeds from his execution of the bank fraud scheme described in sub-paragraph a above into the Industrial Equipment Supply Corp. Harris Bank account with the number ending in 2887, he withdrew \$68,000 from the account to purchase Harris Official Check No. 61225592, payable to himself. The defendant later used the proceeds of the check, in part, to purchase the real property commonly known as 6194 Chatsworth Drive, Rockford, Illinois, which he had purchased in the name of Rock River Reality, LLC, an entity that the defendant alone controlled. No legitimately acquired monies of Rock River Reality, LLC were used in the purchase of the 6194 Chatsworth Drive property and no person other than the defendant had any interest of any type in Rock River Reality, LLC, including but not limited to ownership, creditor, employment, or agency.

d. With respect to Count Seventeen of the second superseding indictment:

Generally, defendant admits he knowingly engaged in a monetary transaction in and affecting interstate commerce, in criminally derived property of a value greater than \$10,000, in that he withdrew and caused to be withdrawn \$90,000.00 from the Industrial Equipment Supply Corp. Harris account with the number ending in 2887, knowing that the money in the account had been derived from a specified unlawful activity, namely the bank fraud charged in Counts One, Six, Eight, Twelve and Fourteen and described in sub-paragraph a above, in violation of Title 18, United States Code, Section 1344.

Specifically, defendant admits that having deposited part of the proceeds from his execution of the bank fraud scheme described in sub-paragraph a above into the Harris Bank

account in the name of Industrial Equipment Supply Corp., he withdrew \$90,000 from the Industrial Equipment Supply Corp. account at Harris Bank with the number ending in 2887 and used it, in part, to purchase the real property commonly known as 1106 Stratford Avenue, Rockford, Illinois, which he had purchased in the name of Rock River Reality, LLC, an entity that the defendant alone controlled. No legitimately acquired monies of Rock River Reality, LLC were used in the purchase of the 1106 Stratford Avenue property, and no person other than the defendant had any interest of any type in Rock River Reality, LLC, including but not limited to ownership, creditor, employment, or agency.

Maximum Statutory Penalties

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

a. Count One carries a maximum sentence of 30 years' imprisonment. Pursuant to Title 18, United States Code, Section 3561, defendant may not be sentenced to a term of probation on this count. Count One also carries a maximum fine of \$1,000,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count One the judge also may impose a term of supervised release of not more than five years.

b. Counts Three, Sixteen, and Seventeen each carry a maximum sentence of 10 years' imprisonment. Counts Three, Sixteen, and Seventeen also each carry 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 Counts Three,

Sixteen, and Seventeen, 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 60 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$1,750,000, 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 \$400, 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, except as specified below:

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 Count One is 7, pursuant to Guideline § 2B1.1(a)(1).

ii. The United States contends, and the defendant reserves the right to disagree, that the offense level for Count One must be increased by 16 levels to 23, pursuant to Guideline § 2B1.1(b)(1)(I), because the loss was \$1,075,000.

iii. The base offense level for Counts Three, Sixteen, and Seventeen is 23, pursuant to Guideline § 2S1.1(a)(1).

iv. The offense level for Counts Three, Sixteen, and Seventeen must be increased by 1 level to 24, pursuant to Guideline § 2S1.1(b)(2)(A), because the defendant was convicted under Title 18, United States Code, Section 1957.

v. Counts One, Three, Sixteen, and Seventeen are grouped pursuant to Guideline § 3D1.2(d).

vi. The offense level for the grouped counts is 24, pursuant to Guideline § 3D1.3(b).

vii. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not

receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions 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 is appropriate.

viii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

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, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, if the Court accepts the government's Sentencing Guidelines calculations based on the facts now known to the government, the anticipated offense level is 21, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory

Sentencing Guidelines range of 37 to 46 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 agrees to recommend that the Court impose a sentence of imprisonment within the applicable guidelines range and to make no further recommendation concerning what sentence of imprisonment should be imposed. The defendant may file a motion requesting a downward variance from the applicable Sentencing Guidelines range. The United States reserves the right to oppose any motion by the defendant for downward variance.

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 pursuant to Title 18, United States Code, § 3663A, the Court must order defendant to make full restitution in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing.

13. Defendant also agrees to pay additional restitution arising from the relevant conduct set forth above in an amount to be determined by the Court at sentencing, pursuant to Title 18, United States Code, §§ 3663(a)(3) and 3664.

14. 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.

15. Defendant agrees to pay the special assessment of \$400 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

16. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

17. 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 second superseding indictment as to defendant.

Forfeiture

18. The second superseding indictment charges that defendant is liable to the United States for approximately \$1,075,000, which funds are subject to forfeiture because those funds constitute proceeds of the bank fraud charged in Count One and were involved in the money laundering charged in Counts Three, Sixteen and Seventeen. Further, defendant has subjected real and personal property to forfeiture, namely 4750 Hydraulic Road, Rockford, Illinois, 6194 Chatsworth Drive, Rockford, Illinois and 1106 Stratford Avenue, Rockford, Illinois, because those properties constitute proceeds of the violations alleged in Counts One, Six, Eight, Twelve and Fourteen, and/or were properties involved in the defendant's violations of 18 U.S.C. § 1957 as charged in Counts Three, Four, Five,

Ten, Eleven, Sixteen, and Seventeen. By entry of a guilty plea to Counts One, Three, Sixteen and Seventeen of the second superseding indictment, defendant acknowledges that the property identified above is subject to forfeiture.

19. Defendant agrees to the entry of a forfeiture judgment in the amount of \$1,075,000, and against the property identified above, in that this property is 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 properties and further agrees to the seizure of these properties so that these properties may be disposed of according to law.

20. Defendant further agrees to assist the government in the forfeiture of the specified property, and to take whatever steps are reasonably necessary to pass clear title to such property, including execution of any documents to transfer his interest and the interest of any corporation, including but not limited to Industrial Equipment Supply Corporation and Rock River Reality, Inc., that he controls, in property which the United States has alleged is subject to forfeiture, as deemed necessary by the government. Defendant understands that there will be no two-level reduction in the base offense level for acceptance of responsibility if he refuses to cooperate and assist in the forfeiture to the United States of the proceeds of the offense of conviction.

21. Defendant understands that forfeiture of this property 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. In this case, however, the

United States Attorney's Office will recommend to the Attorney General that any net proceeds derived from the forfeited assets be remitted or restored to eligible victims of the offense, pursuant to 18 U.S.C. 981(e), 28 C.F.R. Pt. 9, and other applicable law.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

22. 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 10 CR 50043.

23. 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.

24. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from defendant and his spouse or defendant's partnership or corporations.

Waiver of Rights

25. 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. 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 second 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.

viii. With respect to forfeiture, defendant understands that if the case were tried before a jury, he would have a right to retain the jury to determine whether the government had established the requisite nexus between defendant's offense and any specific property alleged to be subject to forfeiture.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture, in exchange for the concessions made by the United States in this Plea Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

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

Presentence Investigation Report/Post-Sentence Supervision

26. 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.

27. 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.

28. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release 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 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

29. 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.

30. Defendant agrees to cooperate with the Internal Revenue Service in any tax examination or audit of defendant and his spouse and defendant's partnerships or corporations 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.

31. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure 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 Civil Division of the United States Attorney's Office, or an appropriate federal or state agency (including but not limited to the Internal Revenue Service), 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 or defendant's partnerships or corporations. Nothing in this paragraph or the preceding paragraph precludes defendant and his spouse or defendant's partnerships or corporations from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

32. Defendant understands that pursuant to Title 12, United States Code, Section 1829, his conviction in this case will prohibit him from directly or indirectly participating in the affairs of any financial institution insured by the Federal Deposit Insurance Corporation (FDIC) except with the prior written consent of the FDIC and, during the ten years following his conviction, the additional approval of this Court. Defendant further understands that if he violates this prohibition, he may be punished by imprisonment for up to five years and a fine of up to \$1,000,000.

Conclusion

33. 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.

34. 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.

35. 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.

36. 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.

37. 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

JON C. SHAIN
Defendant

MICHAEL D. LOVE
Assistant U.S. Attorney

JAMES T. ZUBA
Attorney for Defendant