

COPY

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U.S.D.C. Atlanta

MAY 19 2009

GUILTY PLEA and PLEA AGREEMENT

JAMES N. HATTEN, Clerk
By:  Deputy Clerk

United States Attorney
Northern District of Georgia

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CRIMINAL NO. 1:09-CR-197

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

ADMISSIONS

1. The defendant admits that he is pleading guilty because he is in fact guilty



of the crimes charged in all counts of the Criminal Information.

WAIVERS

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

entering this Plea Agreement, the defendant may be waiving some or all of those rights to appeal or collaterally attack his sentence, as specified below. Finally, the defendant understands that, to plead guilty, he may have to answer questions posed to him by the Court concerning the rights that he is giving up and the facts of this case, and the defendant's answers, if untruthful, may later be used against him in a prosecution for perjury or false statements.

3. APPEAL WAIVER. The defendant understands that 18 U.S.C. § 3742 provides for the appeal by a defendant of his sentence under certain circumstances. To the maximum extent permitted by federal law, the defendant voluntarily and expressly waives the right to appeal his sentence and the right to collaterally attack his sentence in any post-conviction proceeding on any ground (to include, but not limited to, any motions pursuant to 28 U.S.C. §§ 2254 or 2255), except if the Court imposes a sentence higher than the advisory sentencing guidelines range or a sentence higher than the statutory maximum; and provided further that the defendant may, if he so chooses, appeal any period of actual incarceration exceeding 46 months in prison and then only to the extent of such excess prison sentence and any such appeal shall be based only on the specific Guideline adjustment determination that resulted in such excess

sentence. The defendant understands that this Plea Agreement does not limit the Government's right to appeal, but if the Government files an appeal, the Defendant may also appeal.

SENTENCING INFORMATION

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

- (a) Maximum term of imprisonment: Count I - 20 years; Count II - 10 years.
- (b) Mandatory minimum term of imprisonment: None on any count.
- (c) Term of supervised release: 0 years to 3 years on each count.
- (d) Maximum fine: the greatest of: (i) \$250,000, (ii) twice the gross pecuniary gain from the crime, or (iii) twice the gross pecuniary loss caused to the victim of the crime (18 U.S.C. § 3571(b) and (d)) on each count; alternative maximum for Count II, not more than twice the criminally derived property involved in the transaction (18 U.S.C. § 1957(b)(2)).
- (e) Full restitution, if any, to The Home Depot, Inc., the victim of Count I and the relevant conduct.

(f) Mandatory special assessment: \$100 on each count.

5. Application of the Sentencing Guidelines. The defendant understands that, before imposing sentence in this case, the Court will be required to consider, among other factors, the provisions of the United States Sentencing Guidelines. Ultimately, it is within the Court's discretion to impose a sentence up to and including the statutory maximum. The defendant also understands that no one can predict his exact sentence at this time. The parties agree, however, that a reasonable custodial sentence for purposes of Title 18, United States Code, Section 3553 is one that falls within the otherwise applicable guideline range, and that neither party will seek a departure or variance from the otherwise applicable custodial guideline range, except as set forth in this Plea Agreement.

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

(a) The Government and the defendant agree to advise the Court and the United States Probation Office that the dollar amount to be used under Sentencing Guideline Section 2B4.1(b)(1) is more than \$400,000 and less than or equal to \$2,500,000 and that it is their recommendation that this amount be used in determining defendant's sentence for Count I of the

Criminal Information. Specifically, the Government and the defendant will recommend to the Court and the United States Probation Office that they should use their discretion to use the figure of \$502,000 and not the larger figure noted in Paragraph 8.

(b) The Government will advise the Court and the United States Probation Office that the following adjustment to the Sentencing Guideline calculation for Count I of the Criminal Information should apply; provided, however, that the Government will fully advise the Court and the United States Probation Office of all facts necessary to the Court's and the Probation Office's determination of whatever other adjustments, if any, to the Guidelines calculation as the Court and the United States Probation Office shall deem appropriate as to any Count: Section 3B1.3 (abuse of trust) - two points. The defendant shall be free to dispute the application of the aforesaid enumerated Sentencing Guideline points in this Paragraph 6(b) and same would not be interpreted to deprive defendant of acceptance of responsibility;

(c) The Government and the defendant agree that for the purposes of Sentencing Guideline Section 2S1.1(a)(1), the underlying offense conduct should be determined to be that set out in Count I of the Criminal Information which defendant hereby admits he committed.

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

ADDITIONAL PROVISIONS

8. Restitution. The defendant agrees to pay full restitution, if any, as may be ordered by the Court to The Home Depot, Inc., the victim of Count I of the Criminal Information to which he is pleading guilty and any relevant conduct. The defendant understands that the amount of restitution owed to The Home Depot, Inc. will be determined at or before sentencing. Specifically, the defendant understands that the Government will inform the Court that the amount of



restitution should be \$1,471,467.60. The defendant also agrees to cooperate fully with the Government and the United States Probation Office in the identification of assets to be applied toward restitution in which he has any actual, beneficial, or joint ownership, wherever located, and will execute such documentation, as may be required to locate and secure such assets, as may be deemed necessary by the Government or the United States Probation Office. The defendant's cooperation obligations include fully and truthfully completing the Department of Justice's Financial Statement of Debtor form within ten (10) days of the change of plea hearing; submitting to a financial deposition or an interview or interviews (if necessary) regarding his past and present financial condition as well as that of all members of his household (including but not limited to that of his current wife, any former wife, and children), prior to sentencing; providing any documentation requested by the Government or the United States Probation Office regarding his financial condition as well as that of all household members (including but not limited to that of his current wife, former wife, and children); and fully and truthfully answering all questions regarding his past and present financial condition in such interview(s).

The defendant also agrees that the full amount of restitution ordered by the Court shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision

of the United States Probation Office at any time, he agrees that the custodial agency and the United States Probation Office will have the authority to establish payment schedules to ensure payment of restitution. The defendant further agrees to cooperate fully in efforts to collect his restitution obligation by set-off of program payments, execution on non-exempt property, and any other means the Government deems appropriate.

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

The Government agrees to make the extent of the defendant's cooperation known to the sentencing court. In addition, if the cooperation is completed before sentencing and the Government determines that such cooperation qualifies as "substantial assistance" pursuant to Title 18, United States Code, Section 3553(e)

and/or Section 5K1.1 of the Sentencing Guidelines, the Government will consider whether to file a motion at sentencing recommending a downward departure from the applicable guideline range. If the cooperation is completed after sentencing and the Government determines that such cooperation qualifies as "substantial assistance" pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, the Government will consider whether to file a motion for reduction of sentence. In either case, the defendant understands that the determination as to whether he has provided "substantial assistance" rests solely with the Government. Good faith efforts by the defendant that do not substantially assist in the investigation or prosecution of another person who has committed a crime will not result in either a motion for downward departure or a Rule 35 motion. The defendant also understands that, should the Government decide to file a motion pursuant to this paragraph, the Government may recommend any specific sentence, and the final decision as to what credit, if any, the defendant should receive for his cooperation will be determined by the Court. If the defendant fails to cooperate truthfully and completely, or if the defendant engages in additional criminal conduct or other conduct inconsistent with cooperation, he will not be entitled to any consideration whatsoever pursuant to this paragraph.

Pursuant to Section 1B1.8 of the Sentencing Guidelines, the Government agrees that any self-incriminating information that was previously unknown to the

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

10. No Further Charges. The Government agrees not to bring further criminal charges against the defendant related to the charges to which he is pleading guilty; provided, however, that if the Government should discover evidence not currently known to it that indicates either that defendant has had a violent criminal background or that defendant took substantial additional steps to procure or commit violent criminal acts, the Government is free to prosecute defendant for violent criminal activity whether or not it is related to the charges to which he is



pleading guilty. The defendant understands that this provision does not bar prosecution by any other federal, state, or local jurisdiction. The defendant further admits and agrees that venue is proper in the Northern District of Georgia, Atlanta Division as to all counts charged in the Criminal Information.

11. Pre-Payment of Special Assessment. The defendant agrees that, within 30 days of entry of his guilty plea, he will pay a special assessment in the amount of \$200 by money order or certified check made payable to the Clerk of Court, U.S. District Court, 2211 U.S. Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303, and that he will provide proof of such payment to the Government within 30 days of the guilty plea.

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

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

14. Breach of Plea Agreement. If the defendant fails in any way to fulfill each one of his obligations under this Plea Agreement, the Government may elect to be released from its commitments under this Plea Agreement. The Government may then prosecute the defendant for any and all Federal crimes that he has committed related to this case, including any charges dismissed pursuant to this Plea Agreement, and may recommend to the Court any sentence for such crimes up to and including the maximum sentence. The defendant expressly waives any statute of limitations defense and any constitutional or statutory speedy trial defense to such a prosecution, except to the extent that such a defense exists as of the date he signs this Plea Agreement. In addition, the defendant agrees that, in such a prosecution, all admissions and other information that he has provided at any time, including all statements he has made and all evidence he has produced during proffers, interviews, testimony, and otherwise, may be used against him, regardless of any constitutional provision, statute, rule, or agreement to the contrary. Finally, the defendant understands that his violation of the terms of this

Plea Agreement would not entitle him to withdraw his guilty plea in this case.

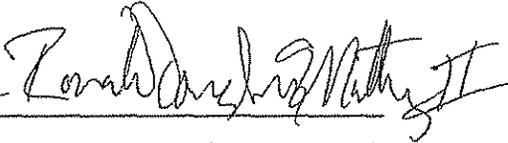
15. Recommendations Non-Binding. The defendant understands and agrees that the recommendations of the Government incorporated within this Plea Agreement or otherwise discussed between the parties are not binding on the Court and that the Court's failure to accept one or more of the recommendations will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

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

In Open Court this 19th day of MAY, 2009.


SIGNATURE (Attorney for Defendant)

HOWARD J. WEINTRAUB
Law Offices of Howard J. Weintraub
1355 Peachtree Street


SIGNATURE (Defendant)
RONALD DOUGLASS MATHENY II

Suite 1520

Atlanta, Georgia 30309

Tele.: 404.892.2000

Fax: 404.892.2040

Georgia Bar. No.: 746456



SIGNATURE (Assistant U.S. Attorney)

RUSSELL PHILLIPS, ESQ.

75 Spring Street, S.W.

Suite 600

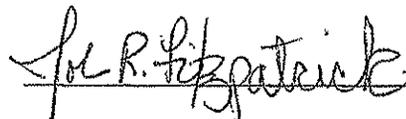
Atlanta, Georgia 30303

Tele.: 404.581.6000

Fax: 404.581.6181

E-mail: russell.phillips@usdoj.gov

Georgia Bar No.: 576335



SIGNATURE (Antitrust Division)

JOHN R. FITZPATRICK, ESQ.

75 Spring Street, S.W.

Suite 1176

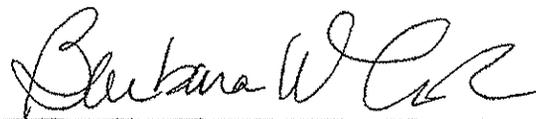
Atlanta, Georgia 30303

Tele.: 404.331.7119

Fax: 404.331.7110

E-mail: john.fitzpatrick@usdoj.gov

Georgia Bar No.: 262360



SIGNATURE (Antitrust Division)

BARBARA W. CASH, ESQ.

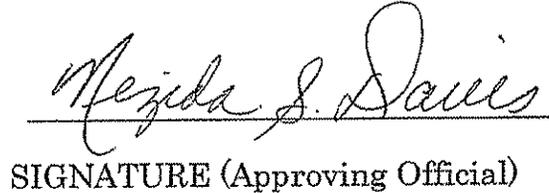


75 Spring Street, S.W.
Suite 1176
Atlanta, Georgia 30303
Tele.: 404.331.7100
Fax: 404.332.7110
E-mail: barbara.cash@usdoj.gov
Georgia Bar No.: 743460

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


SIGNATURE (Approving Official)

RANDY S. CHARTASH
Chief, Economic Crimes


SIGNATURE (Approving Official)

NEZIDA S. DAVIS
Chief, Atlanta Field Office

04-13-99

DATE

I have read the Criminal Information against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the Government would have to prove to convict me at a trial. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea

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



SIGNATURE (Defendant)

RONALD DOUGLASS MATHENY II

APRIL 17, 2009

DATE

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



SIGNATURE (Attorney for Defendant)

HOWARD J. WEINTRAUB

Law Offices of Howard J. Weintraub

1355 Peachtree Street

Suite 1520

Atlanta, Georgia 30309

Tele.: 404.892.2000

Fax: 404.892.2040

Georgia Bar. No.: 746456

Filed in Open Court

By _____

