

OCT 24 2007

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

U.S. DISTRICT COURT  
WESTERN DISTRICT OF NC

UNITED STATES OF AMERICA	)	DOCKET NO. 3:07- CR - 229 - W
	)	
Plaintiff	)	
	)	
v.	)	
	)	PLEA AGREEMENT
JIMMY JOE ROSS LATIMER,	)	
Defendant	)	
_____	)	

NOW COMES the United States of America, by and through Gretchen C.F. Shappert, United States Attorney for the Western District of North Carolina, and the defendant, **JIMMY JOE ROSS LATIMER**, in person and through counsel, S. Frederick Winiker, III, and respectfully inform the Court that they have reached the following agreement:

**I. Plea**

1. The defendant agrees to enter a voluntary plea of guilty to Count One charging the defendant with Conspiracy in violation of 18 U.S.C. § 371 and Count Two charging the defendant with Wire Fraud in violation of 18 U.S.C. § 1343 in the Bill of Information, and admits to being in fact guilty as charged in the counts.

**II. Sentence**

2. The defendant is aware that the penalty for Conspiracy to Commit Wire Fraud is:
- a. a maximum 5 years in prison per count,
  - b. a maximum \$250,000 fine per count,
  - c. a mandatory special assessment of \$100.00 per count,

- d. a term of supervised release of not more than three years, and
- e. an order from the court pursuant to Title 18, United States Code, Section 3663 that defendant make restitution to the victim(s) of the offense of conviction, or the estate(s) of the victims(s). Defendant understands that the court may also order, if agreed to by the parties in this plea agreement, restitution to persons other than the victim(s) of the offense of conviction.

The defendant agrees that because the conduct underlying the Conspiracy (18 U.S.C. § 371) count of conviction was committed in connection with the conduct of telemarketing, 18 U.S.C. § 2326 may apply, this may subject the defendant to a term of imprisonment of up to 10 years in addition to the term of imprisonment imposed for the Conspiracy. Defendant acknowledges and agrees that the Government gave notice of this provision in the Bill of Indictment.

- 3. The defendant is aware that the penalty for committing Wire Fraud is:
  - a. a maximum 20 years in prison per count,
  - b. a maximum \$250,000 fine per count,
  - c. a mandatory special assessment of \$100.00 per count,
  - d. a term of supervised release of not more than three years, and
  - e. an order from the court pursuant to Title 18, United States Code, Section 3663 that defendant make restitution to the victim(s) of the offense of conviction, or the estate(s) of the victims(s). Defendant understands that the court may also order, if agreed to by the parties in this plea agreement, restitution to persons other than the victim(s) of the offense of conviction.

The defendant agrees that because the conduct underlying the Wire Fraud (18 U.S.C. § 1343)

counts of conviction was committed in connection with the conduct of telemarketing, 18 U.S.C. § 2326 may apply, this may subject the defendant to a term of imprisonment of up to 10 years in addition to the term of imprisonment imposed for the Wire Fraud. Defendant acknowledges and agrees that the Government gave notice of this provision in the Bill of Indictment.

4. The defendant understands that supervised release is a term of supervision that runs consecutively to any sentence of incarceration and that if the Court imposes a term of supervised release, the United States Probation Office will supervise him during that term and will require that he make regular reports and visits to its office. The defendant understands that a violation of the conditions of supervised release may subject him to an additional period of incarceration up to the maximum term of years imposed as supervised release.

5. The defendant is aware that the Court will consider the *United States Sentencing Guidelines* [U.S.S.G.] in determining the appropriate sentence and that the sentence will be without parole. The defendant is further aware that the Court has not yet determined the sentence, that any estimate from any source, including defense counsel, of the likely sentence is a prediction rather than a promise, and that the Court has the final discretion to impose any sentence up to the statutory maximum for each count. The defendant further understands that no recommendations or agreements by the United States are binding upon the Court. The defendant and the United States agree that the United States Sentencing Guidelines effective November 1, 2006 are applicable to the determination of the total offense level.

6. With regard to the *United States Sentencing Guidelines*, the defendant and the United States, pursuant to Fed. R. Crim P. 11(c)(1)(B), stipulate and agree that the United States can prove beyond a reasonable doubt that :

a. The amount of loss that was known to or reasonably foreseeable by the defendant was in excess of \$30,000 but less than \$70,000 in fraudulent transactions with over 250 victims. The defendant understands that “loss” under *U.S.S.G. § 2B1.1*, of the November 1, 2006 *United States Sentencing Guidelines* may be different from, greater, or less than “restitution” under 18 U.S.C. § 3556.

b. The offense level for the subject offense group, Conspiracy to Commit Wire Fraud and Wire Fraud, in violation of 18 U.S.C. §§ 371 and 1343 is as follows:

(i) Base Offense Level [*U.S.S.G. § 2B1.1(a)*]: + 7

SPECIFIC CHARACTERISTICS:

(ii) [*U.S.S.G. § 2B1.1(b)(1)(D)*] Loss +6  
(More than \$30,000 but less than \$70,000)

(iii) [*U.S.S.G. § 2B1.1(b)(2)(C)*] Multiple victims + 6  
(More than 250 victims)

(iv) [*U.S.S.G. § 2B1.1(b)(8)(A)*] Misrepresentation + 2  
(Acting on behalf of a charitable organization)

(v) [*U.S.S.G. § 2B1.1(b)(9)(B)*] + 2  
(Committed from outside the U.S.)

ADJUSTMENTS

(vi) [*U.S.S.G. § 3A1.1(b)(1)*] Vulnerable Victim + 2

TOTAL (without acceptance adjustment) 25

**Misrepresentation.** The parties agree that because the defendant knew that the conspiracy and the scheme to defraud included the misrepresentation that the defendant and his co-conspirators were working on behalf of his co-conspirators were working on behalf of a government agency, a two-level increase in offense level under *U.S.S.G. §*

*2B1.1(b)(8)(A)* applies.

**Committed from Outside the United States.** The parties agree that because the defendant knew that a substantial part of the conspiracy and the fraudulent scheme was committed outside of the United States, a two-level increase in offense level under *U.S.S.G. § 2B1.1(b)(9)(B)* applies.

**Vulnerable Victim Adjustment.** The parties agree that because defendant knew or should have known that the victims of the conspiracy and the scheme to defraud were unusually vulnerable due to age, physical or mental condition, or that they were otherwise particularly susceptible to the criminal conduct, a two-level increase in offense level under *U.S.S.G. § 3A1.1(b)(1)* applies. The parties agree further that many of the victims of the conspiracy and scheme to defraud were targeted by the defendant and his co-conspirators because they were particularly susceptible to the fraud scheme.

c. Provided that the defendant clearly demonstrates acceptance of responsibility for his offense, as well as all relevant conduct, the government will recommend a two-level reduction in offense level pursuant to *U.S.S.G. § 3E1.1(a)*.

d. Provided that the defendant qualifies for a decrease under subsection *U.S.S.G. § 3E1.1(a)*, and that the offense level determined prior to the operation of subsection *U.S.S.G. § 3E1.1(a)* is level 16 or greater, and upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level.

However, the defendant understands that any reduction in offense level is ultimately for the Court's determination.

e. There is no agreement as to defendant's Criminal History Category. Notwithstanding any recommendations in the Plea Agreement as to the offense level, if the Probation Office determines from the defendant's criminal history that *U.S.S.G. § 4B1.1* (Career Offender) applies, that provision may be used in determining the sentence. Should a statutory minimum sentence apply, the Court shall impose a sentence no lower than that statutory minimum.

7. The defendant agrees to pay full restitution. Defendant understands that with respect to restitution, (a) as part of the sentence, the Court may order restitution be paid to any or all of the victims that defendant and the other coconspirators and participants in the scheme defrauded, and (b) if the Court determines that the conduct underlying the conspiracy to commit wire fraud and the wire fraud counts of conviction was committed in connection with the conduct of telemarketing (as defendant has admitted), restitution will be mandatory. Defendant agrees that the amount of restitution ordered by the court shall include defendant's total offense conduct, and is not limited to the count(s) of conviction. Accordingly, the parties agree and will jointly recommend that defendant pay restitution in the amount of **\$5,000,000** (five million dollars). The defendant's restitution obligation shall be joint and several with that of his co-conspirators. The restitution described in this paragraph shall be paid through the Office of the Clerk of the District Court.

The defendant agrees to truthfully complete a financial statement form provided by the United States Attorney. The defendant shall date said form and sign it under penalty of perjury, thereby acknowledging that his financial statement fully and completely discloses his financial

condition as of the date it is signed. Defendant shall update the financial statement with any material changes to his financial condition. Defendant shall provide to the United States his signed and dated financial statement within 30 days of his signature on this plea agreement and any updates within seven days of the event changing his financial condition. Defendant understands and agrees that his financial statement will be used for the collection of any fine or restitution ordered by the Court, and the identification of property subject to forfeiture. The parties agree that the defendant's failure to timely and accurately complete and sign a financial statement and any update may, in addition to any other penalty or remedy authorized by law, constitute his failure to accept responsibility under *U.S.S.G. § 3E1.1*.

For the preparation of his Presentence Report, the defendant agrees to cooperate fully with and make a full disclosure of all current and projected assets and property to the United States Probation Office and to the United States. If the defendant is ordered to serve a term of supervised release or probation, he agrees to make a full disclosure of his assets and property to the United States Probation Office prior to the termination of his supervised release or probation. If the defendant should fail to make the aforementioned full disclosures, then the United States will be relieved of its obligations under the Plea Agreement, but the defendant will not be allowed to withdraw his guilty plea.

8. The parties agree that if the Court imposes the stipulated amount of mandatory restitution set forth above, then no fine will be appropriate. The parties agree further that in the event that the Court does not impose the recommended restitution, the Court may impose a fine in its discretion.

9. Because more than \$500.00 in restitution, fines, and/or assessment is owed to the United States government, a lien will be filed. The defendant understands that once a lien is filed against his property, his obligation to pay restitution shall last for twenty years after any imprisonment ordered or until his death. 18 U.S.C. § 3613.

10. The defendant hereby agrees to pay the total amount required for special assessments (\$200) to the Clerk, United States District Court, before 5:00 p.m. on the day of sentencing. The special assessment shall be paid through the office of the Clerk of the District Court. The defendant further agrees to participate in the Inmate Financial Responsibility Program to the extent necessary to fulfill all financial obligations due and owing under this agreement and the law.

### **III. Government's Recommendation Regarding Custody**

11. Provided that the defendant complies with all the terms of this plea agreement, the Government will recommend that defendant be sentenced to the low end of the advisory guideline range as calculated by the Government pursuant to this Agreement. However, if the Court adopts an offense level or downward adjustment or departure below the Government's recommendations in this Agreement, the Government may recommend a sentence as near as possible to what the sentence would have been if the Government's recommendations had been followed.

### **IV. Procedure**

12. The defendant agrees that a duly-qualified federal Magistrate Judge may conduct the hearing required by Fed. R. Crim. P. 11.

13. With the Court's permission, the factual basis, as required by Fed. R. Crim. P. 11(b)(3), will be deferred until the time of sentencing. The defendant stipulates that there is a factual basis for the plea of guilty and that the Court may use the offense conduct set out in the



Presentence Report, except any facts to which the defendant has objected, to establish a factual basis for the defendant's plea.

#### **V. Waivers**

14. The defendant understands and agrees that if he should fail to specifically perform or to fulfill completely each and every one of his obligations under this Plea Agreement, then the United States will be relieved of its obligations under the agreement, but the defendant will not be allowed to withdraw his guilty plea.

15. The defendant is aware that the law provides certain limited rights to withdraw a plea of guilty. The defendant has discussed these rights with defense counsel and knowingly and expressly waives any right to withdraw the plea once the District Court has accepted it.

16. The defendant acknowledges that Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 are rules which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. The defendant knowingly and voluntarily waives the rights which arise under these Rules. As a result of this waiver, he understands and agrees that any statements which are made in the course of his guilty plea or in connection with his cooperation pursuant to this plea agreement will be admissible against him for any purpose in any criminal or civil proceeding if his guilty plea is subsequently withdrawn.

17. The defendant understands and agrees that by pleading guilty, he is expressly waiving the following rights:

- a. to be tried by a jury,
- b. to be assisted by an attorney at trial,

- c. to confront and cross-examine witnesses, and
- d. not to be compelled to incriminate himself.

18. Defendant and defendant's counsel warrant that they have discussed: (1) defendant's rights pursuant to 18 U.S.C. § 3742, 28 U.S.C. § 2255, and similar authorities to contest a conviction and/or sentence through an appeal or post-conviction after entering into a plea agreement; (2) whether or not there are potential issues which might be relevant to an appeal or post-conviction action; and (3) the possible impact of any such issue on the desirability to the defendant of entering into this plea agreement.

Defendant, in exchange for the concessions made by the United States in this Plea Agreement, waives all such rights to contest the conviction and/or any sentence within the maximum provided by the statute of conviction except for (1) claims of ineffective assistance of counsel or (2) prosecutorial misconduct.

Also, in exchange for the concessions made by the United States, defendant agrees that the United States preserves all its rights and duties with respect to appeal as set forth in 18 U.S.C. § 3742(b), while the defendant waives all rights to appeal or collaterally attack the sentence of conviction with the exceptions set forth above. This agreement does not limit the United States in its comments in or responses to any post-conviction matters.

19. The defendant waives all rights, whether asserted directly or by a representative, to request or to receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

20. The defendant stipulates that any sentence that falls within the applicable guideline range as determined by the United States Probation Office and pursuant to any departures from the applicable range as recommended by the government is *per se* reasonable. The defendant waives any right to contest such a sentence on the basis that the Court's imposition of such a sentence was unreasonable or an abuse of its discretion.

21. If the Pre-Sentence Investigation (hereinafter "PSI") recommends however an applicable Guidelines range higher than the Guidelines range jointly recommended by the parties in this agreement, the defendant may at his discretion file with the Court a "variance motion" pursuant to 18 U.S.C. § 3553(a) to consider the factors listed therein, not later than seven (7) days prior to sentencing, to adjust the Guidelines range to a level not lower than the level jointly agreed upon by the parties in this plea agreement.

## **VII. Conclusion**

22. The defendant understands that if he breaches this Plea Agreement, or violates any federal, state or local law, or any order of any court, including any condition of pre-trial or pre-sentence, or post-sentence release, the United States will be relieved of its obligations under this Plea Agreement, but the defendant will not be allowed to withdraw his guilty plea. The United States will be free to proceed on any properly-filed dismissed, pending, superseding, or additional charges.

//

//

//

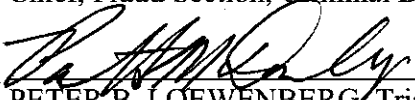
//

23. There are no agreements, representations, or understandings between the parties in this case, other than those explicitly set forth in this Plea Agreement and none will be entered into unless executed in writing and signed by all parties.

SO AGREED:

GRETCHEN C.F. SHAPPERT  
United States Attorney  
Western District of North Carolina

STEVEN A. TYRRELL  
Chief, Fraud Section, Criminal Division

  
PETER B. LOEWENBERG, Trial Attorney  
PATRICK M. DONLEY, Senior Litigation Counsel  
U.S. Department of Justice

DATED: 10/22/07

  
S. FREDERICK WINIKER, III, Attorney for Defendant

DATED: October 24, 2007

  
JIMMY JOE ROSS LATIMER, Defendant

DATED: 10-24-07