

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:15-CR-244-T-23AEP

GIGNESH MOVALIA
_____ /

PLEA AGREEMENT

The United States of America, by and through the Fraud Section of the Criminal Division of the United States Department of Justice and the United States Attorney's Office for the Middle District of Florida (hereinafter referred to as the "United States"), and Gignesh Movalia (hereinafter referred to as the "defendant"), enter into the following agreement:

1. Pleaded Count

The defendant agrees to plead guilty to Count One of the Information, which charges the defendant with investment advisers fraud in violation of 15 U.S.C. § 80b-6. The defendant acknowledges that he has read the charge against him contained in the Information and that the charge has been fully explained to him by his attorneys.

2. Maximum Penalties and Special Assessments

The defendant understands and acknowledges that as to Count One, the Court may impose a statutory maximum term of imprisonment of up to five (5) years and a fine of up to \$10,000, pursuant to 15 U.S.C. § 80b-17.

The defendant further understands and acknowledges that, in addition to any sentence imposed under this section, a special assessment in the total amount of \$100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

3. Sentencing Process

The defendant is aware that the sentence will be imposed by the Court. The defendant understands and agrees that federal sentencing law requires the Court to impose a sentence that is reasonable and that the Court must consider the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines") in effect at the time the offense was committed in determining that reasonable sentence. The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the Court's Probation Office, which

investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that while the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, it is not bound to impose that sentence. Defendant understands that the facts that determine the offense level will be found by the Court at the time of sentencing and that in making those determinations the Court may consider any reliable evidence, including hearsay, as well as the provisions or stipulations in this Plea Agreement. The Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in section 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

First: The defendant is an “investment adviser” as defined in 15 U.S.C. § 80b-2(11), in that he, for compensation, engaged in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities;

Second: The defendant used the mails or interstate commerce in order to (1) employ a device, scheme, or artifice to defraud a client or prospective client; (2) engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client; or (3) engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative; and

Third: The defendant did so knowingly and willfully, that is, deliberately.

5. No Further Charges

If the Court accepts this Plea Agreement, the United States agrees not to charge defendant with committing any other federal criminal offenses known to the United States at the time of the execution of this Agreement, related to the conduct giving rise to this Plea Agreement.

6. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. §§ 3663A(a) and (b), defendant agrees to make full restitution in the amount to be determined to the United States. The defendant shall be jointly and severally liable with his co-conspirators for this restitution amount.

The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

7. Guidelines Sentence

The United States and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed:

- (a) That the offense level pursuant to the Sentencing Guidelines is determined as follows:

<u>Guideline</u>	<u>Description</u>	<u>Levels</u>
§ 2B1.1(a)(2)	Base Offense	+6
§ 2B1.1(b)(1)(L)	Loss Amount > \$2.5 million	+18
§ 2B1.1(b)(2)(B)	> 50 Victims	+4
	TOTAL OFFENSE LEVEL	<u>28</u>
§ 3E1.1	Acceptance of Responsibility	-3 ¹
	TOTAL ADJUSTED OFFENSE LEVEL	25

9. Acceptance of Responsibility and Cooperation

The defendant shall cooperate with law enforcement officials, attorneys with the United States by providing full, complete and truthful information regarding his knowledge, conduct and actions and by providing active cooperation in ongoing investigations if requested to do so. If called upon to do so, the defendant shall provide complete and truthful testimony before any grand jury or trial jury in any criminal case, in any civil proceeding or trial, and in any administrative proceeding or hearing. In carrying out his obligations under this paragraph defendant shall neither minimize his own involvement or fabricate, minimize or exaggerate the involvement of others. If the defendant intentionally provides any incomplete or untruthful statements or testimony, his actions shall be deemed a material breach of

¹ Should the defendant not receive the true benefit of the three-level downward adjustment for acceptance of responsibility, the parties agree that the sentencing court has the discretion to vary downward three levels, pursuant to *United States v. Rodriguez*, 64 F.3d 638 (11th Cir. 1995).

this Agreement, and the United States shall be free to pursue all appropriate charges against him notwithstanding any agreements to forebear from bringing additional charges as may be otherwise set forth in this Agreement.

The defendant shall provide the Probation Office and counsel for the United States with a full, complete and accurate personal financial statement. If the defendant provides incomplete or untruthful statements in his personal financial statement, his action shall be deemed a material breach of this Agreement, and the United States shall be free to pursue all appropriate charges against him notwithstanding any agreements to forbear from bringing additional charges otherwise set forth in this Agreement.

Provided that the defendant commits no new criminal offenses and provided he continues to demonstrate an affirmative recognition and affirmative acceptance of personal responsibility for his criminal conduct, the United States agrees that it will recommend at sentencing that the defendant receive a three level reduction for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. The United States, however, will not be required to make this sentencing recommendation if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the United States and the Probation

Office of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) is found to have misrepresented facts to the United States prior to entering this Plea Agreement; or (3) commits any misconduct after entering into this Plea Agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

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

The United States reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the Court at the time of sentencing. If in the sole and unreviewable judgment of the United States, the defendant's cooperation is of such quality and significance to the investigation or prosecution of other

criminal matters as to warrant the Court's downward departure from the sentence advised by the Sentencing Guidelines, the United States may at or before sentencing make a motion pursuant to Title 18, United States Code, Section 3553(e), Section 5K1.1 of the Sentencing Guidelines, or subsequent to sentencing by motion pursuant to Rule 35 of the Federal Rules of Criminal Procedure, reflecting that the defendant has provided substantial assistance and recommending a sentence reduction. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require the United States to file such a motion and that the assessment by the United States of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

The defendant understands and acknowledges that the Court is under no obligation to grant a motion by the United States pursuant to Title 18, United States Code, Section 3553(e), 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, should the United States exercise its discretion to file such a motion.

10. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the

right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; (c) the ground of ineffective assistance of counsel; or (d) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a). The defendant further agrees, together with the United States, to request that the district Court enter a specific finding that the defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

11. Agreement Binds Only Fraud Section and U.S. Attorney's Office for the Middle District of Florida

It is further understood that this agreement is limited to the Fraud Section of the U.S. Department of Justice and the United States Attorney's Office for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's

cooperation, if any, to the attention of other prosecuting officers or others, if requested.

12. Voluntariness

The defendant acknowledges that defendant is entering into this Agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there

will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

13. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

Defendant is the managing member of OM Global Investment Fund LLC (the "OM Global Fund"), an unregistered pooled investment vehicle fund formed in 2009. Defendant is also the principal owner and operator of OM Investment Management LLC, a formerly registered investment advisor. Defendant and the OM Global Fund were investment advisers within the

meaning of Section 202(a)(11) of the Investment Advisers Act, 15 U.S.C. Section 80-b2(a)(11).

Beginning in or about 2011, defendant began soliciting investments for the OM Global Fund by, among other methods, touting its access to pre-IPO shares of Facebook, Inc. By the end of 2012, defendant had secured investments exceeding \$15 million for the OM Global Fund. As part of the investments for the OM Global Fund, defendant raised more than \$9 million “side pocket” investments based on representations to approximately 130 investors that their investments in the OM Global Fund would be used exclusively for the purchase of shares of Facebook. Contrary to these representations and unbeknown to “side pocket” investors, defendant later sold Facebook shares and thereafter used certain of those funds designated exclusively for the purchase of Facebook shares for other investments.

Defendant made material misrepresentations and omissions through OM Investment Management to investors in order to mislead investors about the nature and value of their investment in the OM Global Fund and to conceal from “side pocket” investors that he had used their money for investments other than Facebook.

The OM Global Fund lost approximately \$9 million before it went into receivership in September 2013.

14. FRCP 11(f) and FRE 410 Waiver and Use of Plea Agreement

Defendant waives any protections afforded by Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence. The defendant agrees that the Plea Agreement in its entirety, including the Factual Basis, is admissible against the defendant in any criminal proceeding as affirmative evidence of the Defendant's guilt. The defendant agrees to stipulate to the admission of the entire Plea Agreement, or any portions thereof, in any criminal proceeding brought by the United States. The defendant agrees not to seek to limit use of the Plea Agreement by the United States in any criminal proceeding.

The agreements defendant makes in this section are binding on the defendant even if the defendant does not enter a change of plea to guilty in court or later withdraws his guilty plea.

15. Entire Agreement

This Plea Agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea, and no other promises, agreements, or representations exist or have

been made to the defendant or defendant's attorneys with regard to such guilty plea.

16. Certification

The defendant and defendant's counsel certify that this Plea Agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

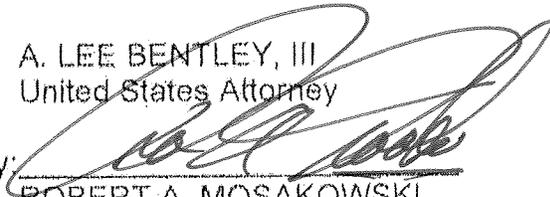
ANDREW WEISSMANN
Chief, Fraud Section
United States Department of Justice

Dated: 7/1/2015

By: 
ANDREW H. WARREN
Trial Attorney

A. LEE BENTLEY, III
United States Attorney

Dated: 7/1/15

By: 
ROBERT A. MOSAKOWSKI
Assistant United States Attorney
Chief, Economic Crimes Section

Dated: 7/1/2015

By: 
MARK RANKIN, ESQ.
Counsel for Defendant

Dated: 7/1/2015

By: 
GIGNESH MOVALIA
Defendant