

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 11-20131-CR-Martinez(s)

UNITED STATES OF AMERICA

vs

TIMOTHY BROWN BARHAM, JR.,

Defendant.

PLEA AGREEMENT

The United States of America, by and through the Fraud Section of the United States Department of Justice's Criminal Division (hereinafter referred as the "Fraud Section"), and Timothy Brown Barham, Jr. (hereinafter referred to as the "defendant"), enter into the following agreement:

1. The defendant agrees to plead guilty to Count One of the Superseding Indictment charging conspiracy to commit securities fraud, wire fraud, and mail fraud in violation of Title 18, United States Code, Section 371.

2. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). 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 the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence. The 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 United States and the defendant agree to recommend that the Sentencing Guidelines should apply pursuant to United States v. Booker, that the Guidelines provide a fair and just resolution based on the facts of this case, and that no upward or downward departures, or adjustments other than those agreed to in this plea agreement, are appropriate other than the reductions for acceptance of responsibility. 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 offense identified in paragraph one (1) and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to five (5) years, followed by a term of supervised release of up to three (3) years. In addition to a term of imprisonment and supervised release, the Court may impose a maximum fine of up to \$250,000, or not more than the greater of twice the gross gain or gross loss, pursuant to 18 U.S.C. § 3571(d), resulting from the offense set

forth in paragraph one (1) above.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph three (3) of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid by the time of sentencing.

5. The defendant understands that restitution under Title 18, United States Code, Section 3663A is mandatory and he agrees that the restitution required as a result of the offense set forth in paragraph one (1) above shall be equal to the amount of any actual victim loss attributable to the defendant's knowing participation in this offense, as determined at sentencing. The defendant agrees that offenses against property listed under Title 18, United States Code, Section 3663A, were committed by him as part of the fraud scheme set forth in paragraph one (1) above, and that those offenses gave rise to this plea agreement. The defendant further agrees, as permitted by Title 18, United States Code, Section 3663A(a)(3), that restitution payable by him shall be payable for the full amount of the actual loss arising from the relevant conduct related to this matter, not just from the offense of conviction. The parties agree to recommend to the Court that any restitution due and owed should be joint and several.

6. The Fraud Section 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 agreement, the Fraud Section further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. The defendant shall provide the Probation Office, the Fraud Section, and the United States Attorney's Office for the Southern District of Florida 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.

8. 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 Fraud Section agrees that, it will recommend at sentencing that the defendant receive a two level reduction for acceptance of responsibility pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be sixteen (16) or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, 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. The Fraud Section, however, will not be required to make this motion or any of the recommendations set forth in this paragraph if the defendant: (a) fails or refuses to make a full, accurate and complete disclosure to the Probation Office of the circumstances surrounding the relevant offense conduct

and his present financial condition; (b) is found to have misrepresented facts to the United States prior to entering into this plea agreement; or (c) 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.

9. The Fraud Section and the defendant agree, although not binding on the Probation Office or the Court and assuming compliance with all of the terms of the plea agreement, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed on the count to which the defendant shall plead:

- a. Applicable Guideline Offense and Base Offense Level: The offense guideline applicable to the defendant's offense is Sentencing Guidelines Section 2B1.1(a)(1), which provides for a base offense level of six (6) because the defendant will plead guilty to conspiracy to commit securities fraud, wire fraud, and mail fraud, which carries a maximum term of imprisonment of five (5) years.
- b. Specific Offense Characteristic: The parties agree and stipulate that the following offense characteristics apply under Section 2B1.1(b):
 - (i) Amount of Loss - The parties agree that a reasonable estimate of the reasonably foreseeable pecuniary harm that resulted from the offense was greater than \$7,000,000 and less than \$20,000,000, increasing the offense level by twenty (20) under Section 2B1.1(b)(1)(K);
 - (ii) Number of Victims - The parties agree that the offense involved 250

or more victims, increasing the offense level by six (6) under Section 2B1.1(b)(2)(C);

(iii) Sophisticated Means: The parties agree that a substantial part of the scheme was committed outside the United States and involved sophisticated means, increasing the offense level by two (2) under Section 2B1.1(b)(9)(B) and (C).

10. The defendant acknowledges and understands that additional or different enhancements or guideline provisions might be applicable, and that neither the Court nor the Probation Office is bound by the parties' joint recommendations.

11. This agreement excludes Title 26 offenses, crimes of violence, and any other proceeding that may be pending at the time this agreement is signed. This agreement is also limited to the Fraud Section and, as such, does not and cannot bind other federal, state, regulatory, or local prosecuting authorities.

12. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the Fraud Section, or the Probation Office, is a prediction, not a promise, and is not binding on the Fraud Section, the Probation Office, or the Court. The defendant understands further that any recommendation that this Fraud Section makes to the Court as to sentencing, whether pursuant to this agreement, or otherwise is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph two (2) above, that the defendant may not withdraw his

plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, the Fraud Section, or a recommendation made jointly by both the defendant and the Fraud Section.

13. In the event the defendant withdraws from this agreement prior to or after pleading guilty to the charges identified in paragraph one (1) above, or should the Fraud Section, in its sole discretion, determine that the defendant has failed to fully comply with any of the terms of this plea agreement, the Fraud Section will be released from its obligation under this agreement, and the defendant agrees and understands that: (a) the defendant thereby waives any protection afforded by any proffer letter agreement between the parties, Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, (b) that any statements made by the defendant as part of plea discussions, any debriefings or interviews, or in this agreement, whether made prior to or after the execution of this agreement, will be admissible against him without any limitation in any civil or criminal proceeding brought by the government; (c) the defendant's waiver of any defense based on the statute of limitations, including the waiver set forth in paragraph 12, or any other defense based on the passage of time in filing an indictment or information, referred to herein, shall remain in full force and effect; and (d) the defendant stipulates to the admissibility and authenticity, in any case brought by the United States in any way related to the agreed factual basis for the defendant's guilty plea, of any documents provided by the defendant or the defendant's representatives to any state or federal agency and/or the Fraud Section; and (e) the defendant further stipulates to the admissibility, in any case brought by the United States in any way related to the facts referred to in this agreement, of the entire factual basis related to the

defendant's guilty plea, as the defendant's own statement.

14. The defendant hereby knowingly and voluntarily waives any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information against the defendant with respect to any criminal offenses in connection with the defendant's criminal conduct described in paragraph one (1) above.

15. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the Fraud Section in this plea agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, or to collaterally attack the conviction pursuant to Title 28, United States Code, Sections 2255, 2254, 2241 or any other applicable provision, unless the sentence exceeds the maximum permitted by statute or is the result of any upward departure from the guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the Fraud Section appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate/collateral attack rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal/collateral attack waiver set forth in this agreement with his attorney. The defendant further agrees, together with the Fraud Section, to request that the district court enter a specific finding that the defendant's waiver or his right to appeal or to collaterally attack the conviction or sentence to be imposed in this case was knowing and voluntary.

16. The defendant agrees that he shall cooperate fully with the Fraud Section by:
- a. providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by the Fraud Section, whether in interviews, before a grand jury, or at any trial or court proceeding;
 - b. appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by the Fraud Section;
 - c. if requested by the Fraud Section, working in an undercover role to contact and negotiate with others suspected and believed to be involved in criminal misconduct, under the supervision of, and in compliance with, law enforcement officers and agents; and
 - d. in providing information and testimony, he will not seek to protect any person or entity through false information or omission, and will not falsely implicate any person or entity.

17. The United States will not use any truthful information provided pursuant to this agreement in any criminal prosecution against the defendant, except in any prosecution for a crime of violence or conspiracy to commit, or aiding and abetting, a crime of violence (as defined in Title 18, United States Code, Section 16). Pursuant to U.S.S.G. section 1B1.8, no truthful information that the defendant provides under this agreement will be used in determining the applicable guideline range, except as provided in section 1B1.8(b). Nothing in this plea agreement, however, restricts the Court's or Probation Officer's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant knowingly provide false, untruthful, or perjurious information or testimony, or from using information

provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested.

18. The defendant knowingly and voluntarily agrees and consents to the entry of an order of forfeiture setting forth the amount of a personal money judgment against him in the sum of \$250,000 (hereinafter the "forfeiture money judgment") pursuant to Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure.

a. The defendant agrees that the sum of the forfeiture money judgment represents the property, real or personal, which constitutes or is derived from proceeds traceable to the violation alleged in Count 1 of the Superseding Indictment, to which he will plead guilty.

b. The defendant knowingly and voluntarily agrees to waive his right to a hearing to determine the amount of money that he will be ordered to pay as a personal money judgment.

c. The defendant knowingly and voluntarily agrees to waive the following rights regarding the entry of the forfeiture money judgment: (1) all constitutional, legal, and equitable defenses to the entry of the forfeiture money judgment; (2) any constitutional or statutory double jeopardy defense or claim concerning the entry of the forfeiture money judgment; and (3) any claim or defense under the Eighth Amendment to the United States Constitution, including, but not limited to, any claim or defense of excessive fine in any proceedings concerning the entry of the forfeiture money judgment.

d. The defendant knowingly and voluntarily agrees and consents to the entry of an order pursuant to Title 21, United States Code, Section 853(e) to repatriate and deposit any property belonging to the defendant, or any business entity which the defendant owns or controls

in part or in whole, that may be seized and forfeited in partial or full satisfaction of the forfeiture money judgment.

19. The Fraud Section and the United States Attorney's Office for the Southern District of Florida will request that the appropriate government officials credit the amount that the defendant pays in forfeiture against any order of restitution in this case. The defendant understands that the appropriate Department of Justice official(s) must approve the request and the forfeiture amount must be provided to the victim fund before any credit may be given.

20. The defendant also agrees that the defendant shall assist the Fraud Section and the United States Attorney's Office for the Southern District of Florida in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, regardless of their nature or form, in all assets, including real and personal property, cash and other monetary instruments, wherever located, which the defendant or others have accumulated as a result of illegal activities. Such assistance will involve an agreement on defendant's part to the entry of an order enjoining the transfer or encumbrance of assets which may be identified as being subject to forfeiture. Additionally, defendant agrees to identify as being subject to forfeiture all such assets, and to assist in the transfer of such property to the United States by delivery to the United States Department of Justice upon the Fraud Section's and/or the United States Attorney's Office's request, all necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds and any and all other documents necessary to deliver good and marketable title to said property.

21. The defendant also understands and agrees that he will not commit any further crimes. The defendant further understands that he may be prosecuted for, without

limitation, any materially false statement made at any time during his cooperation with the United States, including the federal perjury, obstruction of justice, and false statements statutes.

22. In addition, should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and reasonably disclose all information and provide full and complete cooperation, which determinations are within the sole discretion of the United States, this Agreement is voidable at the option of the United States, and the following conditions shall then also apply:

a. The defendant may be prosecuted for perjury or false statements, if any, committed while testifying pursuant to this Agreement or for obstruction of justice should he commit these offenses during the time in which he is cooperating with law enforcement pursuant to this Agreement;

b. The United States may use against the defendant his own admissions and statements and the information, books, papers, documents and objects that he himself has furnished in the course of his cooperation with the United States.

23. The Fraud Section 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 Fraud Section 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 required by the Sentencing Guidelines, the Fraud Section 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 Rule 35 of the Federal Rules of Criminal Procedure subsequent to

sentencing, reflecting that the defendant has provided substantial assistance and recommending sentence reduction. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require the Fraud Section to file such a motion and that the Fraud Section's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

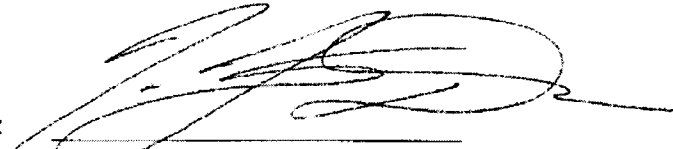
24. The defendant understands and acknowledges that the court is under no obligation to grant a government motion pursuant to Title 18, United States Code, Section 3553(e), 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in this agreement, should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

25. This is the entire agreement and understanding between the Fraud Section and the defendant. There are no other agreements, promises, representations, or understandings.

DENIS J. MCINERNEY
CHIEF
UNITED STATES DEPARTMENT OF JUSTICE
FRAUD SECTION, CRIMINAL DIVISION

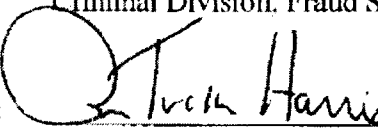
Dated: 12/6/11

By:



N. NATHAN DIMOCK
United States Department of Justice
Criminal Division, Fraud Section

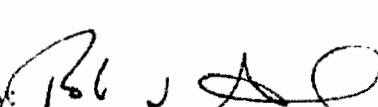
Dated: 12/6/2011

By:


RINA TUCKER HARRIS
United States Department of Justice
Criminal Division, Fraud Section

Dated: 12-1-11 By: 
TIMOTHY BROWN BARHAM, JR.
DEFENDANT

Dated: 12/2/11 By: 
CHARLEY DAVIDSON
COUNSEL FOR TIMOTHY BROWN BARHAM, JR.

Dated: 12-2-11 By: 
ROBERT AXELROD
COUNSEL FOR TIMOTHY BROWN BARHAM, JR.