

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)
)
) No. 3:06-00204
) 3:08-00194
)
) JUDGE ECHOLS
)
)
v.)
)
BARRY R. STOKES)

PLEA AGREEMENT

The United States of America, through Edward M. Yarbrough, United States Attorney for the Middle District of Tennessee, and Courtney D. Trombly, Assistant United States Attorney, and defendant, BARRY R. STOKES, and defendant’s counsel, David Baker and Paul Bruno, pursuant to Rule 11 of the Federal Rules of Criminal Procedure (F.R.C.P.) and governed in part by F.R.C.P. Rule 11(c)(1)(C), have entered into an agreement, the terms and conditions of which are as follows:

Charges in This Case

1. Defendant acknowledges that he has been charged in the Superseding Indictment in this case with twenty-nine counts of embezzlement of Employee Retirement Income Security Act of 1974 (ERISA) funds in violation of 18 U.S.C. § 664; twenty-one counts of mail fraud in violation of 18 U.S.C. § 1341; eleven counts of wire fraud, in violation of 18 U.S.C. § 1343; eleven counts of money laundering in violation of 18 U.S.C. § 1957; and four counts of criminal contempt in violation of 18 U.S.C. § 401(3). Furthermore, the defendant acknowledges that he has been charged with a forfeiture allegation in an Information in Middle District of Tennessee Case No. 3:08-00194.

2. Defendant has read the charges against him contained in the Superseding Indictment and the Information, and those charges have been fully explained to him by his attorneys. Defendant

fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant is Pleading Guilty

3. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Counts 1 through 29 of the Superseding Indictment, charging embezzlement of ERISA funds; Count 41, charging mail fraud; Counts 59 and 60, charging wire fraud; Counts 67 through 72, charging money laundering; and Counts 74 through 77, charging criminal contempt. In addition, the defendant agrees to waive indictment and to plead guilty to the Forfeiture Allegation contained in the Information filed in Middle District of Tennessee Case No. 3:08-00194. The defendant agrees that this plea agreement will be filed in both cases, and agrees to the entry of a forfeiture judgment. 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 Superseding Indictment.

Penalties

4. The parties understand and agree that the offenses to which defendant will enter a plea of guilty carry the following maximum terms of imprisonment and fines, per count:

Counts 1-29: Embezzlement of ERISA Funds

Maximum term of imprisonment:	5 years
Maximum term of supervised release:	3 years
Maximum fine:	\$250,000
Special assessment:	\$100.00

Count 41: Mail Fraud

Maximum term of imprisonment:	20 years
Maximum term of supervised release:	3 years

Maximum fine: \$250,000
Special assessment: \$100.00

Counts 59 and 60: Wire Fraud

Maximum term of imprisonment: 20 years
Maximum term of supervised release: 3 years
Maximum fine: \$250,000
Special assessment: \$100.00

Counts 67 - 72: Money Laundering

Maximum term of imprisonment: 10 years
Maximum term of supervised release: 3 years
Maximum fine: \$250,000 *or* twice the amount of the
criminally derived property in the transaction
Special assessment: \$100.00

Counts 74 -77: Criminal Contempt

Maximum term of imprisonment: 6 months
Maximum term of supervised release: None
Maximum fine: \$1,000
Special assessment: \$100.00

Defendant further understands that the Court must order restitution to the victims of the offenses in an amount determined by the Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

5. 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 3:06-cr-00204 and 3:08-00194.

6. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. 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.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause when actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent; that the government bears the burden of proving defendant guilty of the charge(s) beyond a reasonable doubt; that it could not convict defendant on the charge(s) in the indictment unless; after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt; and that it must consider each count of the indictment against defendant separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) 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. In turn, defendant could present witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

(e) 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 on his own behalf.

7. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

8. The parties have no reason to believe that defendant suffers from any mental health or physical problems that would affect his competency to plead guilty.

Factual Basis

9. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts 1-29, 41, 59, 60, 67-72 and 74-77 of the Superseding Indictment. The defendant further admits that, because those crimes resulted in proceeds subject to forfeiture, he will agree to forfeitures as specified in the Information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt and the basis for forfeiture beyond a reasonable doubt:

Background: 1Point Solutions, LLC

BARRY R. STOKES was the sole owner and Chief Executive Officer (CEO) of 1Point Solutions, LLC (“1Point Solutions”). 1Point Solutions was a limited liability company organized under the laws of the state of Tennessee, with its principal place of business located at 101 South Main Street in Dickson, Tennessee. 1Point Solutions was engaged in the business of third party administration for various types of employee benefit plans such as 401(k) retirement plans, Flexible Spending Accounts (FSAs), Health Savings Accounts (HSAs), Health Reimbursement Accounts (HRAs), and Dependent Care Plans (DCPs). After years of rapid growth and expansion, by the summer of 2006, 1Point Solutions administered various types of employee benefit plans for over approximately 35,000 individual employees (“participants”) from over approximately 800 different entities (“employers”).

BARRY R. STOKES and 1Point Solutions offered third party administration services for the 401(k) retirement plans of approximately fifty-five (55) employers and individuals, from which there were over 1,000 individual employee participants. These 401(k) retirement plans were “employee pension benefit plans” as defined by the Employee Retirement Income Security Act of 1974 (“ERISA”). The assets of these retirement plans were entrusted to **BARRY R. STOKES** and 1Point Solutions, and constituted the retirement accounts of over approximately 1,000 employee participants.

Through advertising and sales presentations, **BARRY R. STOKES** had convinced numerous employers to entrust their employer-sponsored retirement plans to 1Point Solutions. **BARRY R. STOKES** promised each employer that he and 1Point Solutions would assume three functions for the retirement plans entrusted to 1Point Solutions. First, **BARRY R. STOKES**

promised to offer an extensive list of mutual funds from which each participant could make choices as to how contributions were to be invested. **BARRY R. STOKES** promised to invest plan assets according to participant enrollment forms that directed **BARRY R. STOKES** to invest in specific mutual funds according to each participant's election of percentages and contributions. Second, **BARRY R. STOKES** was to serve as the custodian of funds, exercising complete control and responsibility over the financial assets and investments for each respective retirement plan. Finally, **BARRY R. STOKES** and 1Point Solutions were to act as the third party administrator (TPA), servicing the plans by overseeing enrollment of new plan participants, disseminating quarterly account statements to each plan participant, and keeping track of plan contributions, distributions, loans and rollovers.

The quarterly account statements were supposed to be reports that accurately detailed investment performance and plan balances for each plan participant. In addition to the quarterly statements, **BARRY R. STOKES** also promised that his company would provide a state-of-the-art website through which plan participants could access and view individual account activity detailing investment performance, progress and balances on a daily basis.

Barry R. Stokes' Scheme To Defraud

From on or about January 1, 2002 to on or about October 13, 2006, in the Middle District of Tennessee and elsewhere, the defendant, **BARRY R. STOKES**, devised and intended to devise a scheme and artifice to defraud and obtain money and property from the clients of 1Point Solutions, by means of materially false and fraudulent pretenses, representations and promises, knowing and having reason to know that said pretenses, representations and promises were and would be false. The scheme and artifice to defraud operated as follows:

BARRY R. STOKES solicited numerous companies and convinced these employers to entrust their retirement plans to 1Point Solutions. As noted above, **BARRY R. STOKES** promised and agreed to act as investment advisor, funds custodian, and TPA for each retirement plan. In so doing, he agreed to invest all plan assets according to participant elections, to provide accurate and detailed accountings and balance statements for each participant, and to act in the best interests of each retirement plan and its participants. Instead of keeping those promises, on or about January 1, 2002, **BARRY R. STOKES** began to use plan assets entrusted to him for purposes other than investing the funds for the benefit of the 401(k) retirement plans. Instead of investing all of the employee contributions as he had promised, **BARRY R. STOKES** kept most of the plan assets in various commingled accounts from which he dispersed plan funds according to his own needs, uses and desires, which included both personal expenses and business and operating expenses for 1Point Solutions.

In order to carry out his scheme to defraud, **BARRY R. STOKES** maintained several different accounts at various financial institutions, and transferred funds to and from these various accounts whenever he wanted or needed to do so. Some of these accounts included:

- a. An AmSouth Bank account ending in 6102 (“1 Point 401(k) Account”);
- b. An AmSouth Bank account ending in 4606 (“Personal Account”);
- c. An AmSouth Bank account ending in 4666 (“General Account”);
- d. A Fifth Third Bank account ending in 6407 (“Fifth Third 401(k) Account”)
- e. A Fifth Third Bank account ending in 4704 (“Fifth Third FSA Account”)

BARRY R. STOKES also established an account with Mid-Atlantic Capital Group, Inc. for the purpose of investing in various stocks, annuities and mutual funds (referred to hereinafter as

“Mid-Atlantic Account”).

Instead of investing the 401(k) funds entrusted to him as required by law and fiduciary duty, in actuality, the defendant invested only \$2.235 million out of over approximately \$22 million in 401(k) plan assets that were entrusted to him, and instead pooled the plan assets in several accounts over which he had control and authority, including the 1 Point 401(k) Account, the Personal Account, and the Mid-Atlantic Account. From those accounts, **BARRY R. STOKES** disseminated and dispersed the plan assets to various other bank accounts under his control, including various other 1Point Solutions operating accounts, and to spend the funds for **BARRY R. STOKES’** own uses. The defendant, or his employees acting under his direction, sent retirement and other employee benefit plan funds funneling through a series of accounts to cover various types of expenditures, massive account overdrafts, and bank fees.

The defendant also caused employees of 1Point Solutions to prepare and to distribute via the United States Postal Service false quarterly 401(k) account statements to employers and participants. These statements falsely represented to each participant that the plan assets were safely invested as directed, when, in fact, most of the assets had never been invested and instead had been converted for the defendant’s own use.

The false statements were created by using sophisticated 401(k) administration software: 1Point Solutions employees entered accurate data regarding employee elections and contributions, and the software applied daily mutual fund performance to the data entered into the software. The resulting statement for each participant listed the specific mutual funds elected and contributions made, along with the total account balance for each quarter. However, the software and, therefore, the quarterly statements, were not linked to the actual bank accounts in any way, and were

fraudulent misrepresentations as to the actual disposition of the employee benefit plan funds. Though the statements reflected what would have been generally accurate account balances had the funds been invested as promised, these stated balances were fraudulent misrepresentations, as the reflected balances had never been properly held in trust or invested by 1Point Solutions.

This software also allowed 1Point Solutions to create and maintain a website through which plan participants could access their individual accounts on a daily basis to check on investment performance and account balances. The website, which pulled its data from the 401(k) software, falsely represented to each participant that the assets of the 401(k) retirement plan were invested in the stocks and mutual funds elected by each respective participant. The website falsely represented that the plan assets were safely invested, when, in fact, most of the assets had never been invested and had been converted for **BARRY R. STOKES'** own use.

In fact, in September 2006, the 1Point website and the most recent quarterly statements indicated that the value of the 401(k) plan assets entrusted to him were over \$16 million. However, investment performance accounted for approximately \$1.5 million of the number reflected in those statements. Because the defendant had never invested the 401(k) funds properly, actual rollovers, conversions, contributions, loans and withdrawals of 401(k) funds resulted in approximately \$14.5 million in missing 401(k) funds.

Between January 2002 and September 2006, **BARRY R. STOKES** continued to receive and to accept regular employer and employee fund contributions to the retirement plans without disclosing that the plan assets had been converted to his own use, and without disclosing that the plan assets had never been invested as directed. During this time period, a total of approximately \$22 million in ERISA funds were entrusted to the defendant and 1Point Solutions.

Through the execution of his scheme to defraud, **BARRY R. STOKES** did misappropriate, embezzle and convert over approximately \$14,500,000 in employee pension benefit plan assets (including rollovers, conversions and contributions) from over approximately 1,000 participants. The defendant also deprived these participants of the opportunity to invest and to grow their retirement accounts. The funds were misappropriated for a variety of purposes, none of which benefitted the participants of the retirement plans or the plans themselves. Purposes for which **BARRY R. STOKES** misappropriated plan assets included, but were not limited to, the following:

i. **BARRY R. STOKES** used embezzled employee benefit plan funds to amass an extensive collection of Japanese art, which he insured for approximately \$2,000,000;

ii. **BARRY R. STOKES** used embezzled employee benefit plan funds to purchase real estate, including buildings in Dickson, Tennessee, two of which were purchased and remodeled for use by 1Point Solutions as the company grew;

iii. **BARRY R. STOKES** used embezzled employee benefit plan funds as an improper source of capital to fund and to grow 1Point Solutions by improperly using plan assets to pay for overhead costs and operating expenses, payroll, marketing, salaries, expense accounts, vehicles, insurance and other business expenditures necessary to maintain the daily functioning of 1Point Solutions for several years;

iv. When certain employers sought to withdraw their 401(k) retirement plans from the custody and control of 1Point Solutions, in order to conceal the fact that he had misappropriated the funds, **BARRY R. STOKES** used assets from other 401(k) and employee benefit plans to pay off the employers whose plan assets had been misappropriated. Between January 2002 and September 2006, the defendant paid out approximately \$6 million in 401(k) funds

to employers who were withdrawing their funds from the defendant’s custody. The defendant determined the amount owed to these employers by referring to the false quarterly statements, and paid out funds in the amounts that would have been accurate had the funds ever been invested. By paying out amounts consistent with the false quarterly statements, the defendant was able to conceal the fact that the plan funds had never been properly invested.

v. **BARRY R. STOKES** used retirement plan assets to pay his own salary and his own personal expenses, including, but not limited, to paying for: an allowance to his wife; personal credit card bills; investments in a restaurant in Nashville, Tennessee; fund-raising parties and events; funding the establishment of a charitable foundation (“1 Point Foundation”); psychic readings; political campaign contributions; jewelry; and numerous personal Pay Pal purchases made over the Internet.

With respect to Counts 1 through 29 of the Superseding Indictment:

Each of these counts represents the victimization of an employer and its 401(k) participants. The defendant convinced each of these entities to use 1Point Solutions as its TPA for its 401(k) plans, knowing full well that he would not and did not properly safeguard the plan funds. Instead of investing the plan funds and acting as a fiduciary for those plans, the defendant embezzled the following plan funds. (The following approximate figures include rollovers, conversions, contributions, loans, withdrawals, fees and investment performance according to the software system that the defendant used to create the false quarterly statements.)

COUNT	Sponsor of Plan	Value of Plan	Number of Participants
1	Beck Arnley Worldparts, Corp.	\$6,079,677.46	147

COUNT	Sponsor of Plan	Value of Plan	Number of Participants
2	EFS, Inc.	\$1,208,919.14	59
3	Gonzales Memorial Hospital	\$1,201,076.96	176
4	Tatham & Associates	\$908,067.15	184
5	Cash Acme	\$787,752.92	68
6	Mastrapasqua Asset Management	\$661,064.77	29
7	Colbert & Winstead	\$558,393.15	20
8	Jimbo's Naturally	\$429,225.91	48
9	Hamilton Ryker, Inc.	\$257,350.84	43
10	Herbert Pounds	\$241,693.46	2
11	Dr. Jay S. Cohen	\$240,661.85	3
12	National Contact Marketing	\$235,417.11	4
13	1Point Solutions, LLC	\$172,183.31	42
14	Tennessee Association of Broadcasters	\$130,427.22	2
15	Atlanta Engineering	\$122,727.62	6
16	Angela Cotton, B.C.O. and Assoc.	\$119,479.51	3
17	Elemental Interactive	\$78,165.25	7
18	J. Michael's Clothiers	\$50,371.34	10
19	Altadena Valley Golf & Country Club	\$35,264.37	24

COUNT	Sponsor of Plan	Value of Plan	Number of Participants
20	Tennessee Democratic Party	\$23,217.87	7
21	Salem Nurse Midwives	\$193,061.69	8
22	Bay Institute	\$158,181.42	13
23	Grist Magazine	\$144,418.83	13
24	VIDA Health Communications	\$133,764.80	12
25	Oregon Natural Resources	\$107,773.55	17
26	Southern Alliance For Clean Engery	\$101,679.43	19
27	Guadelupe Veterinary Clinic	\$88,033.97	6
28	Summit Terminaling	\$50,441.45	2
29	Tennessee Hotel Lodging Association	\$22,984.56	3

In each instance, the funds were part of an employee pension benefit plan subject to Title I of ERISA. The defendant embezzled all of the funds described above from each of the participants listed, thereby willfully and unlawfully depriving the plan of the beneficial use of moneys, funds, securities and other assets by converting and stealing the assets of the plan. This taking was done with the specific intent to deprive the plan of its property and with full knowledge that the taking was wrong.

With Respect to Count 41

As part of his scheme to defraud, the defendant concealed his fraudulent activity by sending employers and participants false quarterly 401(k) account statements that made participants believe that their plan funds had been invested as directed. As described above, the statements were created using 401(k) software into which data related to each participant's account was entered. However, the software was not linked to the actual transactions in the 1Point Solutions bank accounts or the actual location or dissipation of any of the plan funds. As such, every statement mailed from 1Point Solutions to plan participants and employers was materially false. The statements indicated that all contributions had been invested as directed when, in fact, the defendant had made only limited investments, none of which ever corresponded with participant elections or complied with participant directives regarding how the retirement funds were to be invested. In fact, though the defendant was entrusted with approximately \$22 million in 401(k) contributions between 2002 and 2006 (approximately \$13.5 million of which flowed directly into the Mid-Atlantic Capital account), the defendant only invested approximately \$2.235 million of those ERISA funds. Moreover, the defendant's last purchase of any mutual fund shares occurred in early February 2005, and by the end of 2005, the defendant had liquidated all of his investment accounts by pulling the money out of the mutual fund investments, out of the Mid-Atlantic account and finally placing it into the AmSouth 401(k) account. Over the years, the defendant pulled approximately \$8.6 million out of the Mid-Atlantic Capital account by transferring it into the AmSouth 401(k) account. From there, the defendant shuttled the money through various AmSouth and Fifth Third bank accounts, keeping the 401(k) plan funds (and other employee benefit plan funds) for his own purposes. The quarterly statements did not reflect this funneling of ERISA funds through various accounts and were, therefore, false.

With respect to Count 41, on June 24, 2005, at the defendant's direction, a plan level quarterly statement was mailed from 1Point Solutions to Beck/Arnley Worldparts, Corp. ("Beck/Arnley") using the United States Postal Service. The statement indicated that the plan assets were intact and invested as directed by participants, when, in fact, the Beck/Arnley plan funds had been embezzled before June 24, 2005, and the defendant had never actually invested even one penny of the Beck/Arnley 401(k) plan funds. Thus, the statement mailed on June 24, 2005 contained materially false information, and the defendant created the statement and directed its mailing with the specific intent to defraud.

Between January 2002 and September 2006, thousands of fraudulent quarterly 401(k) statements were sent to employers and plan participants by the defendant or at the defendant's direction using the United States Postal Service.

With Respect to Counts 59, 60, 67-72:

Throughout the course of the defendant's scheme to defraud, the defendant freely and openly moved and shuttled money through a number of bank accounts. The money was moved for a variety of reasons, including for his own purposes and personal expenditures. The defendant, or his employees under his general direction, also moved huge sums of money to cover massive overdrafts and "bounced" checks that resulted from shortfalls caused by his expenditures and his embezzlement. Essentially, the defendant ran a "Ponzi"-type scheme in which he embezzled and spent one client's employee benefit plan funds, and then used another client's funds to repay the original victim. As a result, between early 2005 and September 2006, many of the 1Point Solutions bank accounts were massively overdrafted, resulting in hundreds of thousands of dollars in insufficient funds (NSF) and overdraft fees being paid to the financial institutions.

In most instances, the defendant, or other 1Point Solutions employees working under the defendant's general direction, sent electronic messages, or email, to various financial institutions to effect fraudulent transfers of ERISA funds and other employee benefit plan funds from one account to another. These transfers were often made to cover overdrafts or shortfalls in various accounts, and were often made under the pressure or the demands of representatives of the financial institutions who were concerned about the overdrafts. The emails provided instructions regarding how much money to transfer, the source account for the transfer, and the destination account.

In some instances, when overdrafts were large, various bank executives instructed 1Point Solutions to pull money from a funded account (e.g., from an account titled "401(k)") for transfer to the underfunded accounts (e.g., to an account titled "FSA"). The result was a constant and erratic churning of money through a series of accounts on a daily basis. The source of the money was never important to or considered by **BARRY R. STOKES** or anyone involved with the accounts: for example, in many cases, FSA contribution checks were used to pay shortfalls in HSA accounts, or 401(k) contribution checks were applied to cover overdrafts in FSA accounts. Likewise, for example, money was freely transferred out of accounts titled "401(k)" and into accounts titled "FSA." In executing his scheme, no account and no source of funds was off-limits, and all were used interchangeably to cover any 1Point Solutions debts or overdrafts.

On May 23-24, 2005, Beck/Arnley transferred approximately \$6,079,677.46 in 401(k) plan funds to the 1Point Solutions account at Mid-Atlantic. Once the Beck/Arnley 401(k) funds were received in the Mid-Atlantic account, the defendant immediately began to effect transfers out of the Mid-Atlantic account to other 1 Point accounts, and to other financial institutions. However, the defendant never invested any of the Beck/Arnley 401(k) funds as he was required to do.

Instead, almost immediately upon receiving these funds, the defendant began to move the 401(k) funds into other bank accounts, which enabled him to embezzle and to dissipate the funds on a variety of expenditures. For example, the ERISA funds were used to pay off other 401(k) clients whose accounts had been previously embezzled; to purchase art; to purchase real estate; and to replenish other 1Point Solutions accounts that were massively overdrawn at the time.

Counts 59 and 60: Two of the transactions dissipating Beck/Arnley funds occurred on May 31, 2005. On this date, the defendant sent an email to Mid-Atlantic Capital Group instructing Mid-Atlantic to transfer \$1,648,702.07 from the 1Point Solutions account to an account at Deutsche Bank for the benefit of Greenpeace, Inc., as the Greenpeace 401(k) plan had been embezzled and its ERISA funds entirely dissipated by the defendant prior to May 2005.

On May 31, 2005, the defendant also sent an email to Mid-Atlantic Capital Group instructing Mid-Atlantic to transfer \$2,241,695.62 to Mellon Bank for the benefit of Crosslin Supply, another company whose entire 401(k) plan had been embezzled by the defendant prior to May 2005. In the months leading up to these transfers, both Greenpeace and Crosslin had been demanding the return of their ERISA plan funds. However, despite such demands and the threat of legal action, the defendant had been unable to comply because he had embezzled and spent the entirety of both plan's funds. On May 31, 2005, the defendant sent the emails that facilitated the transfer of Beck-Arnley 401(k) plan funds to pay off Greenpeace and Crosslin Supply. By sending these emails, the defendant transmitted material fraudulent representations and writings by means of wire communication in interstate commerce with the specific intent to defraud in furtherance of his scheme and artifice to defraud.

Using similar emails and wire communications, the defendant eventually transferred the

remainder of the Beck/Arnley 401(k) funds out of the Mid-Atlantic accounts. Most often, the funds were shuttled to and through 1Point Solutions bank accounts at other financial institutions.

Counts 67 through 72: Emails, other wire communications, and account transfers like those described above facilitated the defendant's money laundering activity, as the defendant knowingly engaged in transactions involving financial institutions, all while knowing full well that the funds being transferred were criminally derived from embezzlement of ERISA funds, a specified unlawful activity for purposes of Title 18, United States Code, Section 1957, which proscribes money laundering.

With Respect to Counts 74 - 77:

On September 13, 2006, the Hon. William J. Haynes, Jr., United States District Judge for the Middle District of Tennessee, issued a Temporary Restraining Order which ordered the defendant to refrain from selling, transferring, encumbering, giving away, hiding or otherwise dissipating any assets held in the name of Barry R. Stokes or 1Point Solutions. The defendant was made aware of this order when he was properly served with a copy of the order on the evening of September 13, 2006. The defendant knowingly and intentionally disobeyed this order when he transferred and dissipated assets as follows:

1.) Loaded his art collection, insured for \$2 million, into his SUV and drove from Dickson, Tennessee to Austin, Texas, where he turned the collection over to his wife for storage at his father-in-law's home; and

2.) Cashed a series of checks on 1Point Solutions accounts, as listed in Counts 74-77 on page 21 of the Superseding Indictment. Each check was written and cashed for just under the \$10,000 Currency Transaction Reporting requirement, of which the defendant was aware and which

the defendant intentionally avoided.

With Respect to Relevant Conduct:

Defendant also acknowledges that for the purpose of determining the applicable advisory sentencing range under the United States Sentencing Guidelines (hereinafter “U.S.S.G.”), the following conduct, to which he stipulates, constitutes relevant conduct under U.S.S.G. §1B1.3. Furthermore, the defendant concedes that the victims listed below are also relevant to calculations of restitution and are entitled to restitution to the same extent as any victims associated with any counts of conviction:

1.) **Embezzlement of ERISA plans:** The defendant also embezzled the ERISA funds of the following plans and participants:

Sponsor of Plan	Value of Plan	Number of Participants
Clouds In My Coffee	\$127.11	1
Motherworks	\$1,127.15	1
Nashville Table	\$1,338.98	1
TN Association of Chiefs of Police	\$4,342.02	1
Hospital Alliance	\$5,054.58	1
B.W.	\$7,532.40	1
Remodeling By J	\$11,135.74	3
Brian Allen Photo	\$15,525.10	1
Ship Shape	\$19,138.63	1
Henry County Orthopedic Surgery and Sports Medicine	\$24,062.86	11
D.N.	\$26,500.55	1

Sponsor of Plan	Value of Plan	Number of Participants
Tuned In Broadcasting	\$31,719.59	11
P.M.	\$35,915.66	1
RCSim	\$36,434.06	2
Abcow	\$41,312.30	14
Codebench	\$52,812.96	5
Independent Press Assoc.	\$62,735.86	9
ELP	\$63,108.85	11
As You Sow	\$77,877.27	6
Grassworx	\$84,800.73	6

2.) **Embezzlement and Losses from other employee benefit plans:** The defendant also agrees that because of his embezzlement, he caused losses to be suffered to other employee benefit plan clients. Losses to other employee benefit plans, including FSA, HSA, Cobra, DCA and other accounts, amounted to approximately \$4,800,000. When combined with actual losses of \$14.5 million on the 401(k) side of the business, the defendant caused a total actual loss of approximately \$19,300,000.

3.) **Additional Relevant Conduct: Wire Fraud and Structuring**

The defendant kept his fraudulent scheme from being detected by using a variety of deceptive devices and practices to prevent clients of 1Point Solutions from being alerted to the fraud.

For example, in the fall of 2004, Crosslin Supply demanded an accounting of the entirety of its ERISA plan funds. To conceal the fact that he had already embezzled and dissipated the entirety of the Crosslin plan, the defendant sent Crosslin Supply a fax that purported to contain an accounting of plan funds in a spreadsheet. The spreadsheet listed the value of Crosslin ERISA funds invested

with each mutual fund. The numbers on the spreadsheet roughly matched the investment elections of the Crosslin participants. The fax also contained documents that the defendant claimed were account statements from various mutual funds. These statements reflected that 1Point Solutions had multi-million dollar investment accounts with each respective mutual fund entity.

In reality, the entire fax was a fraud, as the Crosslin Supply 401(k) plan funds had already been embezzled and the funds dissipated, and the defendant had no such sizable investment accounts at any mutual fund entity. The mutual fund statements contained in the fax had been created, counterfeited and doctored by the defendant to conceal his fraud.

In another instance, in February 2006, a 1Point Solutions client had received complaints from an FSA client as a result of 1Point Solutions FSA reimbursement checks bouncing and bank notifications of “insufficient funds.” When the Austin-based client demanded answers regarding this situation, the defendant and T.H., the Vice President of 1Point Solutions, asked J.P., a vice president in the Nashville offices of a financial institution, to send the disgruntled client a letter vouching for 1Point Solutions. The bank executive agreed, and wrote a letter that acknowledged the “good standing” of the 1Point Solutions accounts, despite his knowledge that the statement was not true: in reality, at the time that the letter was written and sent to the 1Point Solutions clients, the 1Point Solutions accounts had been suffering from massive and protracted overdrafts and negative account balances for several weeks. The bank executive printed the letter on official bank letterhead, and T.H. emailed a scanned version of the letter to the client. At the time that the letter was written and sent, the defendant, T.H. and J.P. all knew that the letter contained material misrepresentations, and that the 1Point Solutions accounts were not in “good standing” given the massive and protracted overdraft situation.

This statement of facts is provided to assist the Court in determining whether a factual basis exists for defendant's plea of guilty and criminal forfeiture and in assessing relevant conduct. The statement of facts does not contain each and every fact known to defendant and to the United States concerning defendant's and/or others' involvement in the offense conduct and other matters.

Sentencing Guidelines Calculations

10. The parties understand that the Court will take account of the United States Sentencing Guidelines (hereinafter "U.S.S.G."), together with other sentencing goals, and will consider the U.S.S.G. advisory sentencing range in imposing defendant's sentence. The parties agree that the U.S.S.G. to be considered in this case are those effective November 1, 2007.

11. For purposes of determining the U.S.S.G. advisory sentencing range, the United States and defendant agree, and agree to disagree, on the following points:

A.) Offense Level Calculations.

(1) Pursuant to Application Note 6 of U.S.S.G. § 2S1.1, all counts of conviction are grouped together pursuant to U.S.S.G. § 3D1.2(c), because they encompass closely related counts. Therefore, pursuant to U.S.S.G. § 3D1.3(a), the offense level applicable to the resulting Group is the highest offense level of the counts in the Group, which, in this case, is the offense level established by application of the Money Laundering guidelines in U.S.S.G. § 2S1.1(a)(1).

(2) Pursuant to U.S.S.G. § 2S1.1(a)(1), the base offense level for the Group is the offense level for the underlying offense from which the laundered funds were derived, determined here according to cross-reference to U.S.S.G. § 2B1.1, entitled "Theft, Embezzlement...and Offenses Involving Fraud and Deceit."

(3) Pursuant to U.S.S.G. § 2B1.1(a), the base offense level is 7;

(4) Pursuant to U.S.S.G. § 2B1.1(b)(1)(E), the offense level is increased by 20 levels because the loss was greater than \$7 million but less than \$20 million, based on actual losses of approximately \$19,300,000 and not including potential investment gains;

(5) Pursuant to U.S.S.G. § 2B1.1(b)(2)(C), the offense level is increased by 6 levels because the offense involved more than 250 victims;

(6) Pursuant to U.S.S.G. § 2B1.1(b)(9)(C), the offense level is increased by 2 levels because the defendant used sophisticated means in the execution of his scheme;

(7) Thus, pursuant to U.S.S.G. § 2S1.1(a), the base offense level for the Group is 35, as calculated by cross-reference to U.S.S.G. § 2B1.1.

(8) Pursuant to U.S.S.G. § 2S1.1(b), the offense level is increased by 1 level because the defendant was convicted under 18 U.S.C. § 1957.

(9) Pursuant to U.S.S.G. § 3B1.3, the offense level is increased by 2 levels because the defendant abused a position of trust.

(10) The parties agree to disagree about the applicability of a 2-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B). The government is free to seek and argue in favor of the application of this 2-level enhancement, and the defense is free to argue against it.

(11) Assuming defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the government, through his allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming defendant accepts responsibility as described in the previous sentence, the United States will move for an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b),

because defendant will have given timely notice 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.

B.) **Criminal History Category.** Based upon the information now known to the government (including representations by the defense), defendant has no known relevant criminal history, and will be a Criminal History Category I

Agreements Relating to Sentencing

12.) This Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that one of two possible specific sentencing ranges is the appropriate calculation of the guidelines in this case. If the court decides that the 2-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B) is applicable, as discussed in paragraph 11(A)(10), the offense level will be 37, which will result in an advisory guidelines range of 210 - 262 months. If the court decides that the enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B) is not applicable, the offense level will be 35, which will result in an advisory guidelines range of 168 - 210 months. Both sides agree that, pursuant to F.R.C.P. 11(c)(1)(C), no additional upward or downward adjustments to the offense level calculations are appropriate, and that the Court's guidelines calculations shall be governed by one of the two above sentencing guidelines ranges. Notwithstanding their agreement that the advisory guidelines range is either 168-210 months or 210-262 months, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. Furthermore, the defense is free to argue for any sentence, within or outside of the advisory guidelines range. The government agrees to argue for no more than the high end of the advisory guidelines range, which will be either 210 months or 268 months. If the Court accepts the

agreed guidelines calculations as set forth in paragraphs 11(A)(1-11) of this agreement, and therefore pronounces an advisory guidelines range of either 168-210 months or 210-268 months, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d). Nor may the defendant withdraw his plea solely on the grounds that the court imposes the 2-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B). If, however, the Court refuses to follow the guidelines calculations set forth herein, and does not pronounce a guidelines range of 168-210 months or 210-268 months, thereby rejecting the Plea Agreement, or otherwise refuses to accept defendant's plea of guilty, either party shall have the right to withdraw from this Plea Agreement.

Cooperation

13.) Defendant agrees to cooperate fully and truthfully with the United States and to provide all information known to him regarding any criminal activity. In that regard:

a.) Defendant agrees to respond truthfully and completely to any and all questions that may be put to him, whether in interviews, before a grand jury, or at any trial(s) or other court proceedings.

b.) Defendant agrees to be reasonably available for debriefings and pre-trial conferences as the United States may require.

c.) Defendant agrees to produce voluntarily any and all documents, records, writings, or materials of any kind in his possession or under his care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d.) Defendant consents to continuances of his sentencing hearing as requested by the United States.

14.) Nothing in this Plea Agreement requires the government to accept any cooperation or

assistance that defendant may choose to proffer. The decision as to whether and how to use any information and/or cooperation that defendant provides (if at all) is in the exclusive discretion of the United States. The government notes that, as of the date of the consummation of this plea agreement, the defendant has *not* cooperated or proffered to government investigators in any way. Since the time of his arrest, he has not cooperated with the government in any way or made any efforts to do so.

15.) Should the defendant decide to cooperate and/or to proffer to government investigators, the defendant must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes. Defendant understands that if he falsely implicates an innocent person in the commission of a crime, or exaggerates the involvement of any person in the commission of a crime in order to appear cooperative, or if defendant falsely minimizes the involvement of any person in the commission of a crime in order to protect that person, then defendant will be in violation of the Plea Agreement. Should the United States determine that defendant has failed to cooperate fully, has intentionally given false, misleading, or incomplete information or testimony, has committed or attempted to commit any further crimes, or has otherwise violated any provision of this Plea Agreement, the United States, may in its discretion and as appropriate in light of particular circumstances: (1) prosecute defendant for perjury, false declarations or statements, and obstruction of justice; (2) prosecute any other crime alleged in the indictment that would have otherwise been dismissed at sentencing; (3) charge defendant with other crimes; and (4) recommend a sentence up to the statutory maximum.

16.) This Plea Agreement is not conditioned upon charges being brought against any other individual. This Plea Agreement is not conditioned upon any outcome in any pending investigation.

This Plea Agreement is not conditioned upon any result in any future prosecution that may occur because of defendant's cooperation. This Plea Agreement is conditioned upon defendant providing full, complete, and truthful cooperation.

17.) The parties agree that the United States reserves its option to seek any departure from the applicable Sentencing Guidelines, pursuant to U.S.S.G. § 5K1.1 or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that such a departure is appropriate.

18.) If the United States in its sole discretion determines that defendant has cooperated fully, provided substantial assistance to law enforcement authorities, and otherwise complied with the terms of this Plea Agreement, the government shall file a motion pursuant to U.S.S.G. § 5K1.1 with the Court setting forth the nature and extent of defendant's cooperation. Defendant understands that at the time this Plea Agreement is entered, no one has promised that a substantial assistance motion will be made on defendant's behalf.

19.) If the United States files a motion pursuant to U.S.S.G. § 5K1.1, it is understood that (a) the United States reserves the right, in its sole discretion, to recommend that the Court impose a particular sentence or departure downward to a particular extent; and (b) the sentence to be imposed upon defendant is within the sole discretion of the Court. The United States cannot, and does not, make any promise or representation as to what sentence defendant will receive. The United States will inform the Probation Office and the Court of (a) this Plea Agreement; (b) the nature and extent of defendant's activities with respect to this case and all other activities of defendant that the United States deems relevant to sentencing; and (c) the nature and extent of defendant's cooperation, if any.

Restitution

20.) Regarding restitution, the parties acknowledge that the amount of restitution owed to victims will be in an amount determined by the court at sentencing, and that it will include the actual loss to victims of his offenses. The defendant also understands that the loss attributable to the defendant for restitution purposes may be greater than the loss attributed to him for purposes of calculating the advisory sentencing guidelines. Pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make restitution in this amount, minus any credit for funds repaid prior to sentencing. Restitution shall be due immediately. The exact amount of restitution owed to the victims will be determined by the court at sentencing, after all interested parties have had an opportunity to provide information to the Court relevant to the issue of restitution.

21.) Defendant agrees to pay the special assessment of \$4,200.00 with a check or money order payable to the Clerk of the U.S. District Court.

Forfeiture

22.) Further, defendant has subjected real and personal property to forfeiture, including approximately 200 pieces of art recovered by the U.S. Government in Austin, Texas, because that property represents proceeds of the defendant's unlawful activity. The defendant agrees to waive indictment and to plead guilty to the Information containing a forfeiture allegation related to the proceeds of his offenses, including the artwork identified above and a money judgment in the amount of the proceeds of his offenses. The parties agree that the amount of proceeds of his offenses is equal to the amount of restitution for which he is liable in this case, as determined by the Court. By his plea of guilty to this Information, and by entry of a guilty plea to Counts 1-29, 41, 59-60, 67-72, and 74-77 of the Superseding Indictment, defendant acknowledges that the property, and

substitute assets, is subject to forfeiture.

23.) Defendant agrees to the entry of a forfeiture judgment 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 property and further agrees to the seizure of this property so that this property may be disposed of according to law. Defendant is unaware of any third party who has an ownership interest in, or claim to, the property subject to forfeiture and will cooperate with the United States during the ancillary stages of any forfeiture proceedings to defeat the claim of a third party in the event a third party files a claim.

Presentence Investigation Report/Post-Sentence Supervision

24.) 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 United States Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, as well as any related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

25.) Defendant agrees to execute truthfully and completely a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the United States 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 U.S.S.G. § 3E1.1 and enhancement of his sentence for obstruction of

justice under U.S.S.G. § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

26.) This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Plea 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 Plea Agreement are limited to the United States Attorney's Office for the Middle District of Tennessee and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Plea Agreement.

27.) Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest, or penalties from defendant.

Waiver of Appellate Rights

28.) Defendant further understands he is waiving all appellate rights that might have been available if he exercised his right to go to trial. It is further agreed that (i) defendant will not file a direct appeal, nor litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any sentence within or below either of the guidelines ranges contemplated under F.R.C.P. 11(c)(1)(C), as set forth in paragraph 12 above, and (ii) the government will not appeal any sentence within or above either of those guidelines ranges. Such waiver does not apply, however, to a claim of involuntariness, prosecutorial misconduct, or ineffective assistance of counsel.

Other Terms

29.) 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.

30.) Defendant further agrees not to become or continue serving as an officer, director, employee, or institution-affiliated party, as defined in 12 U.S.C. Section 1813(u), (the Federal Deposit Insurance Act, as amended), or participate in any manner in the conduct of the affairs of any institution or agency specified in 12 U.S.C. Section 1818(e)(7)(A), without the prior approval of the appropriate federal financial institution regulatory agency as defined in 12 U.S.C. Section 1818(e)(7)(D).

31.) As a condition of the agreement, the defendant agrees that, pursuant to the provisions of Title 29, United States Code, Section 1111, he will be enjoined from serving in any position related to any employee benefit plan. The defendant further understands and agrees that, if his guilty plea is accepted, he will be convicted of criminal felonies involving embezzlement, dishonesty and breach of trust. If he thereafter willfully engages in any business relationship with an employee benefit plan, he will not only be in breach of this agreement but will be in violation of 18 U.S.C. § 1111, a criminal offense punishable by a fine of up to \$10,000 and not more than 5 years in prison, or both.

32.) Should defendant engage in additional criminal activity after he has pled guilty but prior to sentencing, defendant shall be considered to have breached this Plea Agreement, and the government at its option may void this Plea Agreement.

Conclusion

33.) Defendant understands that the superseding indictment and this Plea Agreement will be filed with the Court, will become matters 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 Plea Agreement is a violation of the Plea Agreement. Defendant further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Plea Agreement, or may move to resentence defendant or require defendant's specific performance of this Plea Agreement.

35.) 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.

36.) 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.

37.) No promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement, and none will be entered into unless memorialized in writing and signed by all of the parties listed below.

38.) Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending indictment. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines that may apply in my case. I have read

this Plea Agreement and carefully reviewed every part of it with my attorney. I understand this Plea Agreement, and I voluntarily agree to it.

Date: _____

Barry R. Stokes
Defendant

39.) Defense Counsel Signature: I am counsel for defendant in this case. I have fully explained to defendant his rights with respect to the pending indictment. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements, and I have fully explained to defendant the provisions of those guidelines that may apply in this case. I have reviewed carefully every part of this Plea Agreement with defendant. To my knowledge, defendant's decision to enter into this Plea Agreement is an informed and voluntary one.

Date: _____

Paul Bruno

Date: _____

David Baker

Respectfully submitted,

Edward M. Yarbrough
United States Attorney

By: _____

Courtney D. Trombly
Assistant U.S. Attorney

Eli Richardson
Criminal Chief

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)
)
) No. 3:06-00204
) 3:08-00194
)
) JUDGE ECHOLS
)
)
v.)
)
BARRY R. STOKES)

PLEA AGREEMENT

The United States of America, through Edward M. Yarbrough, United States Attorney for the Middle District of Tennessee, and Courtney D. Trombly, Assistant United States Attorney, and defendant, BARRY R. STOKES, and defendant’s counsel, David Baker and Paul Bruno, pursuant to Rule 11 of the Federal Rules of Criminal Procedure (F.R.C.P.) and governed in part by F.R.C.P. Rule 11(c)(1)(C), have entered into an agreement, the terms and conditions of which are as follows:

Charges in This Case

1. Defendant acknowledges that he has been charged in the Superseding Indictment in this case with twenty-nine counts of embezzlement of Employee Retirement Income Security Act of 1974 (ERISA) funds in violation of 18 U.S.C. § 664; twenty-one counts of mail fraud in violation of 18 U.S.C. § 1341; eleven counts of wire fraud, in violation of 18 U.S.C. § 1343; eleven counts of money laundering in violation of 18 U.S.C. § 1957; and four counts of criminal contempt in violation of 18 U.S.C. § 401(3). Furthermore, the defendant acknowledges that he has been charged with a forfeiture allegation in an Information in Middle District of Tennessee Case No. 3:08-00194.

2. Defendant has read the charges against him contained in the Superseding Indictment and the Information, and those charges have been fully explained to him by his attorneys. Defendant

fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant is Pleading Guilty

3. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Counts 1 through 29 of the Superseding Indictment, charging embezzlement of ERISA funds; Count 41, charging mail fraud; Counts 59 and 60, charging wire fraud; Counts 67 through 72, charging money laundering; and Counts 74 through 77, charging criminal contempt. In addition, the defendant agrees to waive indictment and to plead guilty to the Forfeiture Allegation contained in the Information filed in Middle District of Tennessee Case No. 3:08-00194. The defendant agrees that this plea agreement will be filed in both cases, and agrees to the entry of a forfeiture judgment. 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 Superseding Indictment.

Penalties

4. The parties understand and agree that the offenses to which defendant will enter a plea of guilty carry the following maximum terms of imprisonment and fines, per count:

Counts 1-29: Embezzlement of ERISA Funds

Maximum term of imprisonment:	5 years
Maximum term of supervised release:	3 years
Maximum fine:	\$250,000
Special assessment:	\$100.00

Count 41: Mail Fraud

Maximum term of imprisonment:	20 years
Maximum term of supervised release:	3 years

Maximum fine: \$250,000
Special assessment: \$100.00

Counts 59 and 60: Wire Fraud

Maximum term of imprisonment: 20 years
Maximum term of supervised release: 3 years
Maximum fine: \$250,000
Special assessment: \$100.00

Counts 67 - 72: Money Laundering

Maximum term of imprisonment: 10 years
Maximum term of supervised release: 3 years
Maximum fine: \$250,000 *or* twice the amount of the
criminally derived property in the transaction
Special assessment: \$100.00

Counts 74 -77: Criminal Contempt

Maximum term of imprisonment: 6 months
Maximum term of supervised release: None
Maximum fine: \$1,000
Special assessment: \$100.00

Defendant further understands that the Court must order restitution to the victims of the offenses in an amount determined by the Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

5. 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 3:06-cr-00204 and 3:08-00194.

6. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. 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.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause when actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent; that the government bears the burden of proving defendant guilty of the charge(s) beyond a reasonable doubt; that it could not convict defendant on the charge(s) in the indictment unless; after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt; and that it must consider each count of the indictment against defendant separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) 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. In turn, defendant could present witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

(e) 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 on his own behalf.

7. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

8. The parties have no reason to believe that defendant suffers from any mental health or physical problems that would affect his competency to plead guilty.

Factual Basis

9. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts 1-29, 41, 59, 60, 67-72 and 74-77 of the Superseding Indictment. The defendant further admits that, because those crimes resulted in proceeds subject to forfeiture, he will agree to forfeitures as specified in the Information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt and the basis for forfeiture beyond a reasonable doubt:

Background: 1Point Solutions, LLC

BARRY R. STOKES was the sole owner and Chief Executive Officer (CEO) of 1Point Solutions, LLC (“1Point Solutions”). 1Point Solutions was a limited liability company organized under the laws of the state of Tennessee, with its principal place of business located at 101 South Main Street in Dickson, Tennessee. 1Point Solutions was engaged in the business of third party administration for various types of employee benefit plans such as 401(k) retirement plans, Flexible Spending Accounts (FSAs), Health Savings Accounts (HSAs), Health Reimbursement Accounts (HRAs), and Dependent Care Plans (DCPs). After years of rapid growth and expansion, by the summer of 2006, 1Point Solutions administered various types of employee benefit plans for over approximately 35,000 individual employees (“participants”) from over approximately 800 different entities (“employers”).

BARRY R. STOKES and 1Point Solutions offered third party administration services for the 401(k) retirement plans of approximately fifty-five (55) employers and individuals, from which there were over 1,000 individual employee participants. These 401(k) retirement plans were “employee pension benefit plans” as defined by the Employee Retirement Income Security Act of 1974 (“ERISA”). The assets of these retirement plans were entrusted to **BARRY R. STOKES** and 1Point Solutions, and constituted the retirement accounts of over approximately 1,000 employee participants.

Through advertising and sales presentations, **BARRY R. STOKES** had convinced numerous employers to entrust their employer-sponsored retirement plans to 1Point Solutions. **BARRY R. STOKES** promised each employer that he and 1Point Solutions would assume three functions for the retirement plans entrusted to 1Point Solutions. First, **BARRY R. STOKES**

promised to offer an extensive list of mutual funds from which each participant could make choices as to how contributions were to be invested. **BARRY R. STOKES** promised to invest plan assets according to participant enrollment forms that directed **BARRY R. STOKES** to invest in specific mutual funds according to each participant's election of percentages and contributions. Second, **BARRY R. STOKES** was to serve as the custodian of funds, exercising complete control and responsibility over the financial assets and investments for each respective retirement plan. Finally, **BARRY R. STOKES** and 1Point Solutions were to act as the third party administrator (TPA), servicing the plans by overseeing enrollment of new plan participants, disseminating quarterly account statements to each plan participant, and keeping track of plan contributions, distributions, loans and rollovers.

The quarterly account statements were supposed to be reports that accurately detailed investment performance and plan balances for each plan participant. In addition to the quarterly statements, **BARRY R. STOKES** also promised that his company would provide a state-of-the-art website through which plan participants could access and view individual account activity detailing investment performance, progress and balances on a daily basis.

Barry R. Stokes' Scheme To Defraud

From on or about January 1, 2002 to on or about October 13, 2006, in the Middle District of Tennessee and elsewhere, the defendant, **BARRY R. STOKES**, devised and intended to devise a scheme and artifice to defraud and obtain money and property from the clients of 1Point Solutions, by means of materially false and fraudulent pretenses, representations and promises, knowing and having reason to know that said pretenses, representations and promises were and would be false. The scheme and artifice to defraud operated as follows:

BARRY R. STOKES solicited numerous companies and convinced these employers to entrust their retirement plans to 1Point Solutions. As noted above, **BARRY R. STOKES** promised and agreed to act as investment advisor, funds custodian, and TPA for each retirement plan. In so doing, he agreed to invest all plan assets according to participant elections, to provide accurate and detailed accountings and balance statements for each participant, and to act in the best interests of each retirement plan and its participants. Instead of keeping those promises, on or about January 1, 2002, **BARRY R. STOKES** began to use plan assets entrusted to him for purposes other than investing the funds for the benefit of the 401(k) retirement plans. Instead of investing all of the employee contributions as he had promised, **BARRY R. STOKES** kept most of the plan assets in various commingled accounts from which he dispersed plan funds according to his own needs, uses and desires, which included both personal expenses and business and operating expenses for 1Point Solutions.

In order to carry out his scheme to defraud, **BARRY R. STOKES** maintained several different accounts at various financial institutions, and transferred funds to and from these various accounts whenever he wanted or needed to do so. Some of these accounts included:

- a. An AmSouth Bank account ending in 6102 (“1 Point 401(k) Account”);
- b. An AmSouth Bank account ending in 4606 (“Personal Account”);
- c. An AmSouth Bank account ending in 4666 (“General Account”);
- d. A Fifth Third Bank account ending in 6407 (“Fifth Third 401(k) Account”)
- e. A Fifth Third Bank account ending in 4704 (“Fifth Third FSA Account”)

BARRY R. STOKES also established an account with Mid-Atlantic Capital Group, Inc. for the purpose of investing in various stocks, annuities and mutual funds (referred to hereinafter as

“Mid-Atlantic Account”).

Instead of investing the 401(k) funds entrusted to him as required by law and fiduciary duty, in actuality, the defendant invested only \$2.235 million out of over approximately \$22 million in 401(k) plan assets that were entrusted to him, and instead pooled the plan assets in several accounts over which he had control and authority, including the 1 Point 401(k) Account, the Personal Account, and the Mid-Atlantic Account. From those accounts, **BARRY R. STOKES** disseminated and dispersed the plan assets to various other bank accounts under his control, including various other 1Point Solutions operating accounts, and to spend the funds for **BARRY R. STOKES’** own uses. The defendant, or his employees acting under his direction, sent retirement and other employee benefit plan funds funneling through a series of accounts to cover various types of expenditures, massive account overdrafts, and bank fees.

The defendant also caused employees of 1Point Solutions to prepare and to distribute via the United States Postal Service false quarterly 401(k) account statements to employers and participants. These statements falsely represented to each participant that the plan assets were safely invested as directed, when, in fact, most of the assets had never been invested and instead had been converted for the defendant’s own use.

The false statements were created by using sophisticated 401(k) administration software: 1Point Solutions employees entered accurate data regarding employee elections and contributions, and the software applied daily mutual fund performance to the data entered into the software. The resulting statement for each participant listed the specific mutual funds elected and contributions made, along with the total account balance for each quarter. However, the software and, therefore, the quarterly statements, were not linked to the actual bank accounts in any way, and were

fraudulent misrepresentations as to the actual disposition of the employee benefit plan funds. Though the statements reflected what would have been generally accurate account balances had the funds been invested as promised, these stated balances were fraudulent misrepresentations, as the reflected balances had never been properly held in trust or invested by 1Point Solutions.

This software also allowed 1Point Solutions to create and maintain a website through which plan participants could access their individual accounts on a daily basis to check on investment performance and account balances. The website, which pulled its data from the 401(k) software, falsely represented to each participant that the assets of the 401(k) retirement plan were invested in the stocks and mutual funds elected by each respective participant. The website falsely represented that the plan assets were safely invested, when, in fact, most of the assets had never been invested and had been converted for **BARRY R. STOKES'** own use.

In fact, in September 2006, the 1Point website and the most recent quarterly statements indicated that the value of the 401(k) plan assets entrusted to him were over \$16 million. However, investment performance accounted for approximately \$1.5 million of the number reflected in those statements. Because the defendant had never invested the 401(k) funds properly, actual rollovers, conversions, contributions, loans and withdrawals of 401(k) funds resulted in approximately \$14.5 million in missing 401(k) funds.

Between January 2002 and September 2006, **BARRY R. STOKES** continued to receive and to accept regular employer and employee fund contributions to the retirement plans without disclosing that the plan assets had been converted to his own use, and without disclosing that the plan assets had never been invested as directed. During this time period, a total of approximately \$22 million in ERISA funds were entrusted to the defendant and 1Point Solutions.

Through the execution of his scheme to defraud, **BARRY R. STOKES** did misappropriate, embezzle and convert over approximately \$14,500,000 in employee pension benefit plan assets (including rollovers, conversions and contributions) from over approximately 1,000 participants. The defendant also deprived these participants of the opportunity to invest and to grow their retirement accounts. The funds were misappropriated for a variety of purposes, none of which benefitted the participants of the retirement plans or the plans themselves. Purposes for which **BARRY R. STOKES** misappropriated plan assets included, but were not limited to, the following:

i. **BARRY R. STOKES** used embezzled employee benefit plan funds to amass an extensive collection of Japanese art, which he insured for approximately \$2,000,000;

ii. **BARRY R. STOKES** used embezzled employee benefit plan funds to purchase real estate, including buildings in Dickson, Tennessee, two of which were purchased and remodeled for use by 1Point Solutions as the company grew;

iii. **BARRY R. STOKES** used embezzled employee benefit plan funds as an improper source of capital to fund and to grow 1Point Solutions by improperly using plan assets to pay for overhead costs and operating expenses, payroll, marketing, salaries, expense accounts, vehicles, insurance and other business expenditures necessary to maintain the daily functioning of 1Point Solutions for several years;

iv. When certain employers sought to withdraw their 401(k) retirement plans from the custody and control of 1Point Solutions, in order to conceal the fact that he had misappropriated the funds, **BARRY R. STOKES** used assets from other 401(k) and employee benefit plans to pay off the employers whose plan assets had been misappropriated. Between January 2002 and September 2006, the defendant paid out approximately \$6 million in 401(k) funds

to employers who were withdrawing their funds from the defendant’s custody. The defendant determined the amount owed to these employers by referring to the false quarterly statements, and paid out funds in the amounts that would have been accurate had the funds ever been invested. By paying out amounts consistent with the false quarterly statements, the defendant was able to conceal the fact that the plan funds had never been properly invested.

v. **BARRY R. STOKES** used retirement plan assets to pay his own salary and his own personal expenses, including, but not limited, to paying for: an allowance to his wife; personal credit card bills; investments in a restaurant in Nashville, Tennessee; fund-raising parties and events; funding the establishment of a charitable foundation (“1 Point Foundation”); psychic readings; political campaign contributions; jewelry; and numerous personal Pay Pal purchases made over the Internet.

With respect to Counts 1 through 29 of the Superseding Indictment:

Each of these counts represents the victimization of an employer and its 401(k) participants. The defendant convinced each of these entities to use 1Point Solutions as its TPA for its 401(k) plans, knowing full well that he would not and did not properly safeguard the plan funds. Instead of investing the plan funds and acting as a fiduciary for those plans, the defendant embezzled the following plan funds. (The following approximate figures include rollovers, conversions, contributions, loans, withdrawals, fees and investment performance according to the software system that the defendant used to create the false quarterly statements.)

COUNT	Sponsor of Plan	Value of Plan	Number of Participants
1	Beck Arnley Worldparts, Corp.	\$6,079,677.46	147

COUNT	Sponsor of Plan	Value of Plan	Number of Participants
2	EFS, Inc.	\$1,208,919.14	59
3	Gonzales Memorial Hospital	\$1,201,076.96	176
4	Tatham & Associates	\$908,067.15	184
5	Cash Acme	\$787,752.92	68
6	Mastrapasqua Asset Management	\$661,064.77	29
7	Colbert & Winstead	\$558,393.15	20
8	Jimbo's Naturally	\$429,225.91	48
9	Hamilton Ryker, Inc.	\$257,350.84	43
10	Herbert Pounds	\$241,693.46	2
11	Dr. Jay S. Cohen	\$240,661.85	3
12	National Contact Marketing	\$235,417.11	4
13	1Point Solutions, LLC	\$172,183.31	42
14	Tennessee Association of Broadcasters	\$130,427.22	2
15	Atlanta Engineering	\$122,727.62	6
16	Angela Cotton, B.C.O. and Assoc.	\$119,479.51	3
17	Elemental Interactive	\$78,165.25	7
18	J. Michael's Clothiers	\$50,371.34	10
19	Altadena Valley Golf & Country Club	\$35,264.37	24

COUNT	Sponsor of Plan	Value of Plan	Number of Participants
20	Tennessee Democratic Party	\$23,217.87	7
21	Salem Nurse Midwives	\$193,061.69	8
22	Bay Institute	\$158,181.42	13
23	Grist Magazine	\$144,418.83	13
24	VIDA Health Communications	\$133,764.80	12
25	Oregon Natural Resources	\$107,773.55	17
26	Southern Alliance For Clean Engery	\$101,679.43	19
27	Guadelupe Veterinary Clinic	\$88,033.97	6
28	Summit Terminaling	\$50,441.45	2
29	Tennessee Hotel Lodging Association	\$22,984.56	3

In each instance, the funds were part of an employee pension benefit plan subject to Title I of ERISA. The defendant embezzled all of the funds described above from each of the participants listed, thereby willfully and unlawfully depriving the plan of the beneficial use of moneys, funds, securities and other assets by converting and stealing the assets of the plan. This taking was done with the specific intent to deprive the plan of its property and with full knowledge that the taking was wrong.

With Respect to Count 41

As part of his scheme to defraud, the defendant concealed his fraudulent activity by sending employers and participants false quarterly 401(k) account statements that made participants believe that their plan funds had been invested as directed. As described above, the statements were created using 401(k) software into which data related to each participant's account was entered. However, the software was not linked to the actual transactions in the 1Point Solutions bank accounts or the actual location or dissipation of any of the plan funds. As such, every statement mailed from 1Point Solutions to plan participants and employers was materially false. The statements indicated that all contributions had been invested as directed when, in fact, the defendant had made only limited investments, none of which ever corresponded with participant elections or complied with participant directives regarding how the retirement funds were to be invested. In fact, though the defendant was entrusted with approximately \$22 million in 401(k) contributions between 2002 and 2006 (approximately \$13.5 million of which flowed directly into the Mid-Atlantic Capital account), the defendant only invested approximately \$2.235 million of those ERISA funds. Moreover, the defendant's last purchase of any mutual fund shares occurred in early February 2005, and by the end of 2005, the defendant had liquidated all of his investment accounts by pulling the money out of the mutual fund investments, out of the Mid-Atlantic account and finally placing it into the AmSouth 401(k) account. Over the years, the defendant pulled approximately \$8.6 million out of the Mid-Atlantic Capital account by transferring it into the AmSouth 401(k) account. From there, the defendant shuttled the money through various AmSouth and Fifth Third bank accounts, keeping the 401(k) plan funds (and other employee benefit plan funds) for his own purposes. The quarterly statements did not reflect this funneling of ERISA funds through various accounts and were, therefore, false.

With respect to Count 41, on June 24, 2005, at the defendant's direction, a plan level quarterly statement was mailed from 1Point Solutions to Beck/Arnley Worldparts, Corp. ("Beck/Arnley") using the United States Postal Service. The statement indicated that the plan assets were intact and invested as directed by participants, when, in fact, the Beck/Arnley plan funds had been embezzled before June 24, 2005, and the defendant had never actually invested even one penny of the Beck/Arnley 401(k) plan funds. Thus, the statement mailed on June 24, 2005 contained materially false information, and the defendant created the statement and directed its mailing with the specific intent to defraud.

Between January 2002 and September 2006, thousands of fraudulent quarterly 401(k) statements were sent to employers and plan participants by the defendant or at the defendant's direction using the United States Postal Service.

With Respect to Counts 59, 60, 67-72:

Throughout the course of the defendant's scheme to defraud, the defendant freely and openly moved and shuttled money through a number of bank accounts. The money was moved for a variety of reasons, including for his own purposes and personal expenditures. The defendant, or his employees under his general direction, also moved huge sums of money to cover massive overdrafts and "bounced" checks that resulted from shortfalls caused by his expenditures and his embezzlement. Essentially, the defendant ran a "Ponzi"-type scheme in which he embezzled and spent one client's employee benefit plan funds, and then used another client's funds to repay the original victim. As a result, between early 2005 and September 2006, many of the 1Point Solutions bank accounts were massively overdrafted, resulting in hundreds of thousands of dollars in insufficient funds (NSF) and overdraft fees being paid to the financial institutions.

In most instances, the defendant, or other 1Point Solutions employees working under the defendant's general direction, sent electronic messages, or email, to various financial institutions to effect fraudulent transfers of ERISA funds and other employee benefit plan funds from one account to another. These transfers were often made to cover overdrafts or shortfalls in various accounts, and were often made under the pressure or the demands of representatives of the financial institutions who were concerned about the overdrafts. The emails provided instructions regarding how much money to transfer, the source account for the transfer, and the destination account.

In some instances, when overdrafts were large, various bank executives instructed 1Point Solutions to pull money from a funded account (e.g., from an account titled "401(k)") for transfer to the underfunded accounts (e.g., to an account titled "FSA"). The result was a constant and erratic churning of money through a series of accounts on a daily basis. The source of the money was never important to or considered by **BARRY R. STOKES** or anyone involved with the accounts: for example, in many cases, FSA contribution checks were used to pay shortfalls in HSA accounts, or 401(k) contribution checks were applied to cover overdrafts in FSA accounts. Likewise, for example, money was freely transferred out of accounts titled "401(k)" and into accounts titled "FSA." In executing his scheme, no account and no source of funds was off-limits, and all were used interchangeably to cover any 1Point Solutions debts or overdrafts.

On May 23-24, 2005, Beck/Arnley transferred approximately \$6,079,677.46 in 401(k) plan funds to the 1Point Solutions account at Mid-Atlantic. Once the Beck/Arnley 401(k) funds were received in the Mid-Atlantic account, the defendant immediately began to effect transfers out of the Mid-Atlantic account to other 1 Point accounts, and to other financial institutions. However, the defendant never invested any of the Beck/Arnley 401(k) funds as he was required to do.

Instead, almost immediately upon receiving these funds, the defendant began to move the 401(k) funds into other bank accounts, which enabled him to embezzle and to dissipate the funds on a variety of expenditures. For example, the ERISA funds were used to pay off other 401(k) clients whose accounts had been previously embezzled; to purchase art; to purchase real estate; and to replenish other 1Point Solutions accounts that were massively overdrawn at the time.

Counts 59 and 60: Two of the transactions dissipating Beck/Arnley funds occurred on May 31, 2005. On this date, the defendant sent an email to Mid-Atlantic Capital Group instructing Mid-Atlantic to transfer \$1,648,702.07 from the 1Point Solutions account to an account at Deutsche Bank for the benefit of Greenpeace, Inc., as the Greenpeace 401(k) plan had been embezzled and its ERISA funds entirely dissipated by the defendant prior to May 2005.

On May 31, 2005, the defendant also sent an email to Mid-Atlantic Capital Group instructing Mid-Atlantic to transfer \$2,241,695.62 to Mellon Bank for the benefit of Crosslin Supply, another company whose entire 401(k) plan had been embezzled by the defendant prior to May 2005. In the months leading up to these transfers, both Greenpeace and Crosslin had been demanding the return of their ERISA plan funds. However, despite such demands and the threat of legal action, the defendant had been unable to comply because he had embezzled and spent the entirety of both plan's funds. On May 31, 2005, the defendant sent the emails that facilitated the transfer of Beck-Arnley 401(k) plan funds to pay off Greenpeace and Crosslin Supply. By sending these emails, the defendant transmitted material fraudulent representations and writings by means of wire communication in interstate commerce with the specific intent to defraud in furtherance of his scheme and artifice to defraud.

Using similar emails and wire communications, the defendant eventually transferred the

remainder of the Beck/Arnley 401(k) funds out of the Mid-Atlantic accounts. Most often, the funds were shuttled to and through 1Point Solutions bank accounts at other financial institutions.

Counts 67 through 72: Emails, other wire communications, and account transfers like those described above facilitated the defendant's money laundering activity, as the defendant knowingly engaged in transactions involving financial institutions, all while knowing full well that the funds being transferred were criminally derived from embezzlement of ERISA funds, a specified unlawful activity for purposes of Title 18, United States Code, Section 1957, which proscribes money laundering.

With Respect to Counts 74 - 77:

On September 13, 2006, the Hon. William J. Haynes, Jr., United States District Judge for the Middle District of Tennessee, issued a Temporary Restraining Order which ordered the defendant to refrain from selling, transferring, encumbering, giving away, hiding or otherwise dissipating any assets held in the name of Barry R. Stokes or 1Point Solutions. The defendant was made aware of this order when he was properly served with a copy of the order on the evening of September 13, 2006. The defendant knowingly and intentionally disobeyed this order when he transferred and dissipated assets as follows:

1.) Loaded his art collection, insured for \$2 million, into his SUV and drove from Dickson, Tennessee to Austin, Texas, where he turned the collection over to his wife for storage at his father-in-law's home; and

2.) Cashed a series of checks on 1Point Solutions accounts, as listed in Counts 74-77 on page 21 of the Superseding Indictment. Each check was written and cashed for just under the \$10,000 Currency Transaction Reporting requirement, of which the defendant was aware and which

the defendant intentionally avoided.

With Respect to Relevant Conduct:

Defendant also acknowledges that for the purpose of determining the applicable advisory sentencing range under the United States Sentencing Guidelines (hereinafter “U.S.S.G.”), the following conduct, to which he stipulates, constitutes relevant conduct under U.S.S.G. §1B1.3. Furthermore, the defendant concedes that the victims listed below are also relevant to calculations of restitution and are entitled to restitution to the same extent as any victims associated with any counts of conviction:

1.) **Embezzlement of ERISA plans:** The defendant also embezzled the ERISA funds of the following plans and participants:

Sponsor of Plan	Value of Plan	Number of Participants
Clouds In My Coffee	\$127.11	1
Motherworks	\$1,127.15	1
Nashville Table	\$1,338.98	1
TN Association of Chiefs of Police	\$4,342.02	1
Hospital Alliance	\$5,054.58	1
B.W.	\$7,532.40	1
Remodeling By J	\$11,135.74	3
Brian Allen Photo	\$15,525.10	1
Ship Shape	\$19,138.63	1
Henry County Orthopedic Surgery and Sports Medicine	\$24,062.86	11
D.N.	\$26,500.55	1

Sponsor of Plan	Value of Plan	Number of Participants
Tuned In Broadcasting	\$31,719.59	11
P.M.	\$35,915.66	1
RCSim	\$36,434.06	2
Abcow	\$41,312.30	14
Codebench	\$52,812.96	5
Independent Press Assoc.	\$62,735.86	9
ELP	\$63,108.85	11
As You Sow	\$77,877.27	6
Grassworx	\$84,800.73	6

2.) **Embezzlement and Losses from other employee benefit plans:** The defendant also agrees that because of his embezzlement, he caused losses to be suffered to other employee benefit plan clients. Losses to other employee benefit plans, including FSA, HSA, Cobra, DCA and other accounts, amounted to approximately \$4,800,000. When combined with actual losses of \$14.5 million on the 401(k) side of the business, the defendant caused a total actual loss of approximately \$19,300,000.

3.) **Additional Relevant Conduct: Wire Fraud and Structuring**

The defendant kept his fraudulent scheme from being detected by using a variety of deceptive devices and practices to prevent clients of 1Point Solutions from being alerted to the fraud.

For example, in the fall of 2004, Crosslin Supply demanded an accounting of the entirety of its ERISA plan funds. To conceal the fact that he had already embezzled and dissipated the entirety of the Crosslin plan, the defendant sent Crosslin Supply a fax that purported to contain an accounting of plan funds in a spreadsheet. The spreadsheet listed the value of Crosslin ERISA funds invested

with each mutual fund. The numbers on the spreadsheet roughly matched the investment elections of the Crosslin participants. The fax also contained documents that the defendant claimed were account statements from various mutual funds. These statements reflected that 1Point Solutions had multi-million dollar investment accounts with each respective mutual fund entity.

In reality, the entire fax was a fraud, as the Crosslin Supply 401(k) plan funds had already been embezzled and the funds dissipated, and the defendant had no such sizable investment accounts at any mutual fund entity. The mutual fund statements contained in the fax had been created, counterfeited and doctored by the defendant to conceal his fraud.

In another instance, in February 2006, a 1Point Solutions client had received complaints from an FSA client as a result of 1Point Solutions FSA reimbursement checks bouncing and bank notifications of “insufficient funds.” When the Austin-based client demanded answers regarding this situation, the defendant and T.H., the Vice President of 1Point Solutions, asked J.P., a vice president in the Nashville offices of a financial institution, to send the disgruntled client a letter vouching for 1Point Solutions. The bank executive agreed, and wrote a letter that acknowledged the “good standing” of the 1Point Solutions accounts, despite his knowledge that the statement was not true: in reality, at the time that the letter was written and sent to the 1Point Solutions clients, the 1Point Solutions accounts had been suffering from massive and protracted overdrafts and negative account balances for several weeks. The bank executive printed the letter on official bank letterhead, and T.H. emailed a scanned version of the letter to the client. At the time that the letter was written and sent, the defendant, T.H. and J.P. all knew that the letter contained material misrepresentations, and that the 1Point Solutions accounts were not in “good standing” given the massive and protracted overdraft situation.

This statement of facts is provided to assist the Court in determining whether a factual basis exists for defendant's plea of guilty and criminal forfeiture and in assessing relevant conduct. The statement of facts does not contain each and every fact known to defendant and to the United States concerning defendant's and/or others' involvement in the offense conduct and other matters.

Sentencing Guidelines Calculations

10. The parties understand that the Court will take account of the United States Sentencing Guidelines (hereinafter "U.S.S.G."), together with other sentencing goals, and will consider the U.S.S.G. advisory sentencing range in imposing defendant's sentence. The parties agree that the U.S.S.G. to be considered in this case are those effective November 1, 2007.

11. For purposes of determining the U.S.S.G. advisory sentencing range, the United States and defendant agree, and agree to disagree, on the following points:

A.) Offense Level Calculations.

(1) Pursuant to Application Note 6 of U.S.S.G. § 2S1.1, all counts of conviction are grouped together pursuant to U.S.S.G. § 3D1.2(c), because they encompass closely related counts. Therefore, pursuant to U.S.S.G. § 3D1.3(a), the offense level applicable to the resulting Group is the highest offense level of the counts in the Group, which, in this case, is the offense level established by application of the Money Laundering guidelines in U.S.S.G. § 2S1.1(a)(1).

(2) Pursuant to U.S.S.G. § 2S1.1(a)(1), the base offense level for the Group is the offense level for the underlying offense from which the laundered funds were derived, determined here according to cross-reference to U.S.S.G. § 2B1.1, entitled "Theft, Embezzlement...and Offenses Involving Fraud and Deceit."

(3) Pursuant to U.S.S.G. § 2B1.1(a), the base offense level is 7;

(4) Pursuant to U.S.S.G. § 2B1.1(b)(1)(E), the offense level is increased by 20 levels because the loss was greater than \$7 million but less than \$20 million, based on actual losses of approximately \$19,300,000 and not including potential investment gains;

(5) Pursuant to U.S.S.G. § 2B1.1(b)(2)(C), the offense level is increased by 6 levels because the offense involved more than 250 victims;

(6) Pursuant to U.S.S.G. § 2B1.1(b)(9)(C), the offense level is increased by 2 levels because the defendant used sophisticated means in the execution of his scheme;

(7) Thus, pursuant to U.S.S.G. § 2S1.1(a), the base offense level for the Group is 35, as calculated by cross-reference to U.S.S.G. § 2B1.1.

(8) Pursuant to U.S.S.G. § 2S1.1(b), the offense level is increased by 1 level because the defendant was convicted under 18 U.S.C. § 1957.

(9) Pursuant to U.S.S.G. § 3B1.3, the offense level is increased by 2 levels because the defendant abused a position of trust.

(10) The parties agree to disagree about the applicability of a 2-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B). The government is free to seek and argue in favor of the application of this 2-level enhancement, and the defense is free to argue against it.

(11) Assuming defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the government, through his allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming defendant accepts responsibility as described in the previous sentence, the United States will move for an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b),

because defendant will have given timely notice 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.

B.) **Criminal History Category.** Based upon the information now known to the government (including representations by the defense), defendant has no known relevant criminal history, and will be a Criminal History Category I

Agreements Relating to Sentencing

12.) This Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that one of two possible specific sentencing ranges is the appropriate calculation of the guidelines in this case. If the court decides that the 2-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B) is applicable, as discussed in paragraph 11(A)(10), the offense level will be 37, which will result in an advisory guidelines range of 210 - 262 months. If the court decides that the enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B) is not applicable, the offense level will be 35, which will result in an advisory guidelines range of 168 - 210 months. Both sides agree that, pursuant to F.R.C.P. 11(c)(1)(C), no additional upward or downward adjustments to the offense level calculations are appropriate, and that the Court's guidelines calculations shall be governed by one of the two above sentencing guidelines ranges. Notwithstanding their agreement that the advisory guidelines range is either 168-210 months or 210-262 months, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. Furthermore, the defense is free to argue for any sentence, within or outside of the advisory guidelines range. The government agrees to argue for no more than the high end of the advisory guidelines range, which will be either 210 months or 268 months. If the Court accepts the

agreed guidelines calculations as set forth in paragraphs 11(A)(1-11) of this agreement, and therefore pronounces an advisory guidelines range of either 168-210 months or 210-268 months, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d). Nor may the defendant withdraw his plea solely on the grounds that the court imposes the 2-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B). If, however, the Court refuses to follow the guidelines calculations set forth herein, and does not pronounce a guidelines range of 168-210 months or 210-268 months, thereby rejecting the Plea Agreement, or otherwise refuses to accept defendant's plea of guilty, either party shall have the right to withdraw from this Plea Agreement.

Cooperation

13.) Defendant agrees to cooperate fully and truthfully with the United States and to provide all information known to him regarding any criminal activity. In that regard:

a.) Defendant agrees to respond truthfully and completely to any and all questions that may be put to him, whether in interviews, before a grand jury, or at any trial(s) or other court proceedings.

b.) Defendant agrees to be reasonably available for debriefings and pre-trial conferences as the United States may require.

c.) Defendant agrees to produce voluntarily any and all documents, records, writings, or materials of any kind in his possession or under his care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d.) Defendant consents to continuances of his sentencing hearing as requested by the United States.

14.) Nothing in this Plea Agreement requires the government to accept any cooperation or

assistance that defendant may choose to proffer. The decision as to whether and how to use any information and/or cooperation that defendant provides (if at all) is in the exclusive discretion of the United States. The government notes that, as of the date of the consummation of this plea agreement, the defendant has *not* cooperated or proffered to government investigators in any way. Since the time of his arrest, he has not cooperated with the government in any way or made any efforts to do so.

15.) Should the defendant decide to cooperate and/or to proffer to government investigators, the defendant must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes. Defendant understands that if he falsely implicates an innocent person in the commission of a crime, or exaggerates the involvement of any person in the commission of a crime in order to appear cooperative, or if defendant falsely minimizes the involvement of any person in the commission of a crime in order to protect that person, then defendant will be in violation of the Plea Agreement. Should the United States determine that defendant has failed to cooperate fully, has intentionally given false, misleading, or incomplete information or testimony, has committed or attempted to commit any further crimes, or has otherwise violated any provision of this Plea Agreement, the United States, may in its discretion and as appropriate in light of particular circumstances: (1) prosecute defendant for perjury, false declarations or statements, and obstruction of justice; (2) prosecute any other crime alleged in the indictment that would have otherwise been dismissed at sentencing; (3) charge defendant with other crimes; and (4) recommend a sentence up to the statutory maximum.

16.) This Plea Agreement is not conditioned upon charges being brought against any other individual. This Plea Agreement is not conditioned upon any outcome in any pending investigation.

This Plea Agreement is not conditioned upon any result in any future prosecution that may occur because of defendant's cooperation. This Plea Agreement is conditioned upon defendant providing full, complete, and truthful cooperation.

17.) The parties agree that the United States reserves its option to seek any departure from the applicable Sentencing Guidelines, pursuant to U.S.S.G. § 5K1.1 or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that such a departure is appropriate.

18.) If the United States in its sole discretion determines that defendant has cooperated fully, provided substantial assistance to law enforcement authorities, and otherwise complied with the terms of this Plea Agreement, the government shall file a motion pursuant to U.S.S.G. § 5K1.1 with the Court setting forth the nature and extent of defendant's cooperation. Defendant understands that at the time this Plea Agreement is entered, no one has promised that a substantial assistance motion will be made on defendant's behalf.

19.) If the United States files a motion pursuant to U.S.S.G. § 5K1.1, it is understood that (a) the United States reserves the right, in its sole discretion, to recommend that the Court impose a particular sentence or departure downward to a particular extent; and (b) the sentence to be imposed upon defendant is within the sole discretion of the Court. The United States cannot, and does not, make any promise or representation as to what sentence defendant will receive. The United States will inform the Probation Office and the Court of (a) this Plea Agreement; (b) the nature and extent of defendant's activities with respect to this case and all other activities of defendant that the United States deems relevant to sentencing; and (c) the nature and extent of defendant's cooperation, if any.

Restitution

20.) Regarding restitution, the parties acknowledge that the amount of restitution owed to victims will be in an amount determined by the court at sentencing, and that it will include the actual loss to victims of his offenses. The defendant also understands that the loss attributable to the defendant for restitution purposes may be greater than the loss attributed to him for purposes of calculating the advisory sentencing guidelines. Pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make restitution in this amount, minus any credit for funds repaid prior to sentencing. Restitution shall be due immediately. The exact amount of restitution owed to the victims will be determined by the court at sentencing, after all interested parties have had an opportunity to provide information to the Court relevant to the issue of restitution.

21.) Defendant agrees to pay the special assessment of \$4,200.00 with a check or money order payable to the Clerk of the U.S. District Court.

Forfeiture

22.) Further, defendant has subjected real and personal property to forfeiture, including approximately 200 pieces of art recovered by the U.S. Government in Austin, Texas, because that property represents proceeds of the defendant's unlawful activity. The defendant agrees to waive indictment and to plead guilty to the Information containing a forfeiture allegation related to the proceeds of his offenses, including the artwork identified above and a money judgment in the amount of the proceeds of his offenses. The parties agree that the amount of proceeds of his offenses is equal to the amount of restitution for which he is liable in this case, as determined by the Court. By his plea of guilty to this Information, and by entry of a guilty plea to Counts 1-29, 41, 59-60, 67-72, and 74-77 of the Superseding Indictment, defendant acknowledges that the property, and

substitute assets, is subject to forfeiture.

23.) Defendant agrees to the entry of a forfeiture judgment 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 property and further agrees to the seizure of this property so that this property may be disposed of according to law. Defendant is unaware of any third party who has an ownership interest in, or claim to, the property subject to forfeiture and will cooperate with the United States during the ancillary stages of any forfeiture proceedings to defeat the claim of a third party in the event a third party files a claim.

Presentence Investigation Report/Post-Sentence Supervision

24.) 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 United States Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, as well as any related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

25.) Defendant agrees to execute truthfully and completely a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the United States 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 U.S.S.G. § 3E1.1 and enhancement of his sentence for obstruction of

justice under U.S.S.G. § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

26.) This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Plea 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 Plea Agreement are limited to the United States Attorney's Office for the Middle District of Tennessee and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Plea Agreement.

27.) Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest, or penalties from defendant.

Waiver of Appellate Rights

28.) Defendant further understands he is waiving all appellate rights that might have been available if he exercised his right to go to trial. It is further agreed that (i) defendant will not file a direct appeal, nor litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any sentence within or below either of the guidelines ranges contemplated under F.R.C.P. 11(c)(1)(C), as set forth in paragraph 12 above, and (ii) the government will not appeal any sentence within or above either of those guidelines ranges. Such waiver does not apply, however, to a claim of involuntariness, prosecutorial misconduct, or ineffective assistance of counsel.

Other Terms

29.) 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.

30.) Defendant further agrees not to become or continue serving as an officer, director, employee, or institution-affiliated party, as defined in 12 U.S.C. Section 1813(u), (the Federal Deposit Insurance Act, as amended), or participate in any manner in the conduct of the affairs of any institution or agency specified in 12 U.S.C. Section 1818(e)(7)(A), without the prior approval of the appropriate federal financial institution regulatory agency as defined in 12 U.S.C. Section 1818(e)(7)(D).

31.) As a condition of the agreement, the defendant agrees that, pursuant to the provisions of Title 29, United States Code, Section 1111, he will be enjoined from serving in any position related to any employee benefit plan. The defendant further understands and agrees that, if his guilty plea is accepted, he will be convicted of criminal felonies involving embezzlement, dishonesty and breach of trust. If he thereafter willfully engages in any business relationship with an employee benefit plan, he will not only be in breach of this agreement but will be in violation of 18 U.S.C. § 1111, a criminal offense punishable by a fine of up to \$10,000 and not more than 5 years in prison, or both.

32.) Should defendant engage in additional criminal activity after he has pled guilty but prior to sentencing, defendant shall be considered to have breached this Plea Agreement, and the government at its option may void this Plea Agreement.

Conclusion

33.) Defendant understands that the superseding indictment and this Plea Agreement will be filed with the Court, will become matters 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 Plea Agreement is a violation of the Plea Agreement. Defendant further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Plea Agreement, or may move to resentence defendant or require defendant's specific performance of this Plea Agreement.

35.) 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.

36.) 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.

37.) No promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement, and none will be entered into unless memorialized in writing and signed by all of the parties listed below.

38.) Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending indictment. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines that may apply in my case. I have read

this Plea Agreement and carefully reviewed every part of it with my attorney. I understand this Plea Agreement, and I voluntarily agree to it.

Date: _____

Barry R. Stokes
Defendant

39.) Defense Counsel Signature: I am counsel for defendant in this case. I have fully explained to defendant his rights with respect to the pending indictment. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements, and I have fully explained to defendant the provisions of those guidelines that may apply in this case. I have reviewed carefully every part of this Plea Agreement with defendant. To my knowledge, defendant's decision to enter into this Plea Agreement is an informed and voluntary one.

Date: _____

Paul Bruno

Date: _____

David Baker

Respectfully submitted,

Edward M. Yarbrough
United States Attorney

By: _____

Courtney D. Trombly
Assistant U.S. Attorney

Eli Richardson
Criminal Chief

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)
)
) No. 3:06-00204
) 3:08-00194
)
) JUDGE ECHOLS
)
)
v.)
)
BARRY R. STOKES)

PLEA AGREEMENT

The United States of America, through Edward M. Yarbrough, United States Attorney for the Middle District of Tennessee, and Courtney D. Trombly, Assistant United States Attorney, and defendant, BARRY R. STOKES, and defendant’s counsel, David Baker and Paul Bruno, pursuant to Rule 11 of the Federal Rules of Criminal Procedure (F.R.C.P.) and governed in part by F.R.C.P. Rule 11(c)(1)(C), have entered into an agreement, the terms and conditions of which are as follows:

Charges in This Case

1. Defendant acknowledges that he has been charged in the Superseding Indictment in this case with twenty-nine counts of embezzlement of Employee Retirement Income Security Act of 1974 (ERISA) funds in violation of 18 U.S.C. § 664; twenty-one counts of mail fraud in violation of 18 U.S.C. § 1341; eleven counts of wire fraud, in violation of 18 U.S.C. § 1343; eleven counts of money laundering in violation of 18 U.S.C. § 1957; and four counts of criminal contempt in violation of 18 U.S.C. § 401(3). Furthermore, the defendant acknowledges that he has been charged with a forfeiture allegation in an Information in Middle District of Tennessee Case No. 3:08-00194.

2. Defendant has read the charges against him contained in the Superseding Indictment and the Information, and those charges have been fully explained to him by his attorneys. Defendant

fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant is Pleading Guilty

3. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Counts 1 through 29 of the Superseding Indictment, charging embezzlement of ERISA funds; Count 41, charging mail fraud; Counts 59 and 60, charging wire fraud; Counts 67 through 72, charging money laundering; and Counts 74 through 77, charging criminal contempt. In addition, the defendant agrees to waive indictment and to plead guilty to the Forfeiture Allegation contained in the Information filed in Middle District of Tennessee Case No. 3:08-00194. The defendant agrees that this plea agreement will be filed in both cases, and agrees to the entry of a forfeiture judgment. 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 Superseding Indictment.

Penalties

4. The parties understand and agree that the offenses to which defendant will enter a plea of guilty carry the following maximum terms of imprisonment and fines, per count:

Counts 1-29: Embezzlement of ERISA Funds

Maximum term of imprisonment:	5 years
Maximum term of supervised release:	3 years
Maximum fine:	\$250,000
Special assessment:	\$100.00

Count 41: Mail Fraud

Maximum term of imprisonment:	20 years
Maximum term of supervised release:	3 years

Maximum fine: \$250,000
Special assessment: \$100.00

Counts 59 and 60: Wire Fraud

Maximum term of imprisonment: 20 years
Maximum term of supervised release: 3 years
Maximum fine: \$250,000
Special assessment: \$100.00

Counts 67 - 72: Money Laundering

Maximum term of imprisonment: 10 years
Maximum term of supervised release: 3 years
Maximum fine: \$250,000 *or* twice the amount of the
criminally derived property in the transaction
Special assessment: \$100.00

Counts 74 -77: Criminal Contempt

Maximum term of imprisonment: 6 months
Maximum term of supervised release: None
Maximum fine: \$1,000
Special assessment: \$100.00

Defendant further understands that the Court must order restitution to the victims of the offenses in an amount determined by the Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

5. 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 3:06-cr-00204 and 3:08-00194.

6. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. 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.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause when actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent; that the government bears the burden of proving defendant guilty of the charge(s) beyond a reasonable doubt; that it could not convict defendant on the charge(s) in the indictment unless; after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt; and that it must consider each count of the indictment against defendant separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) 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. In turn, defendant could present witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

(e) 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 on his own behalf.

7. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

8. The parties have no reason to believe that defendant suffers from any mental health or physical problems that would affect his competency to plead guilty.

Factual Basis

9. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts 1-29, 41, 59, 60, 67-72 and 74-77 of the Superseding Indictment. The defendant further admits that, because those crimes resulted in proceeds subject to forfeiture, he will agree to forfeitures as specified in the Information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt and the basis for forfeiture beyond a reasonable doubt:

Background: 1Point Solutions, LLC

BARRY R. STOKES was the sole owner and Chief Executive Officer (CEO) of 1Point Solutions, LLC (“1Point Solutions”). 1Point Solutions was a limited liability company organized under the laws of the state of Tennessee, with its principal place of business located at 101 South Main Street in Dickson, Tennessee. 1Point Solutions was engaged in the business of third party administration for various types of employee benefit plans such as 401(k) retirement plans, Flexible Spending Accounts (FSAs), Health Savings Accounts (HSAs), Health Reimbursement Accounts (HRAs), and Dependent Care Plans (DCPs). After years of rapid growth and expansion, by the summer of 2006, 1Point Solutions administered various types of employee benefit plans for over approximately 35,000 individual employees (“participants”) from over approximately 800 different entities (“employers”).

BARRY R. STOKES and 1Point Solutions offered third party administration services for the 401(k) retirement plans of approximately fifty-five (55) employers and individuals, from which there were over 1,000 individual employee participants. These 401(k) retirement plans were “employee pension benefit plans” as defined by the Employee Retirement Income Security Act of 1974 (“ERISA”). The assets of these retirement plans were entrusted to **BARRY R. STOKES** and 1Point Solutions, and constituted the retirement accounts of over approximately 1,000 employee participants.

Through advertising and sales presentations, **BARRY R. STOKES** had convinced numerous employers to entrust their employer-sponsored retirement plans to 1Point Solutions. **BARRY R. STOKES** promised each employer that he and 1Point Solutions would assume three functions for the retirement plans entrusted to 1Point Solutions. First, **BARRY R. STOKES**

promised to offer an extensive list of mutual funds from which each participant could make choices as to how contributions were to be invested. **BARRY R. STOKES** promised to invest plan assets according to participant enrollment forms that directed **BARRY R. STOKES** to invest in specific mutual funds according to each participant's election of percentages and contributions. Second, **BARRY R. STOKES** was to serve as the custodian of funds, exercising complete control and responsibility over the financial assets and investments for each respective retirement plan. Finally, **BARRY R. STOKES** and 1Point Solutions were to act as the third party administrator (TPA), servicing the plans by overseeing enrollment of new plan participants, disseminating quarterly account statements to each plan participant, and keeping track of plan contributions, distributions, loans and rollovers.

The quarterly account statements were supposed to be reports that accurately detailed investment performance and plan balances for each plan participant. In addition to the quarterly statements, **BARRY R. STOKES** also promised that his company would provide a state-of-the-art website through which plan participants could access and view individual account activity detailing investment performance, progress and balances on a daily basis.

Barry R. Stokes' Scheme To Defraud

From on or about January 1, 2002 to on or about October 13, 2006, in the Middle District of Tennessee and elsewhere, the defendant, **BARRY R. STOKES**, devised and intended to devise a scheme and artifice to defraud and obtain money and property from the clients of 1Point Solutions, by means of materially false and fraudulent pretenses, representations and promises, knowing and having reason to know that said pretenses, representations and promises were and would be false. The scheme and artifice to defraud operated as follows:

BARRY R. STOKES solicited numerous companies and convinced these employers to entrust their retirement plans to 1Point Solutions. As noted above, **BARRY R. STOKES** promised and agreed to act as investment advisor, funds custodian, and TPA for each retirement plan. In so doing, he agreed to invest all plan assets according to participant elections, to provide accurate and detailed accountings and balance statements for each participant, and to act in the best interests of each retirement plan and its participants. Instead of keeping those promises, on or about January 1, 2002, **BARRY R. STOKES** began to use plan assets entrusted to him for purposes other than investing the funds for the benefit of the 401(k) retirement plans. Instead of investing all of the employee contributions as he had promised, **BARRY R. STOKES** kept most of the plan assets in various commingled accounts from which he dispersed plan funds according to his own needs, uses and desires, which included both personal expenses and business and operating expenses for 1Point Solutions.

In order to carry out his scheme to defraud, **BARRY R. STOKES** maintained several different accounts at various financial institutions, and transferred funds to and from these various accounts whenever he wanted or needed to do so. Some of these accounts included:

- a. An AmSouth Bank account ending in 6102 (“1 Point 401(k) Account”);
- b. An AmSouth Bank account ending in 4606 (“Personal Account”);
- c. An AmSouth Bank account ending in 4666 (“General Account”);
- d. A Fifth Third Bank account ending in 6407 (“Fifth Third 401(k) Account”)
- e. A Fifth Third Bank account ending in 4704 (“Fifth Third FSA Account”)

BARRY R. STOKES also established an account with Mid-Atlantic Capital Group, Inc. for the purpose of investing in various stocks, annuities and mutual funds (referred to hereinafter as

“Mid-Atlantic Account”).

Instead of investing the 401(k) funds entrusted to him as required by law and fiduciary duty, in actuality, the defendant invested only \$2.235 million out of over approximately \$22 million in 401(k) plan assets that were entrusted to him, and instead pooled the plan assets in several accounts over which he had control and authority, including the 1 Point 401(k) Account, the Personal Account, and the Mid-Atlantic Account. From those accounts, **BARRY R. STOKES** disseminated and dispersed the plan assets to various other bank accounts under his control, including various other 1Point Solutions operating accounts, and to spend the funds for **BARRY R. STOKES’** own uses. The defendant, or his employees acting under his direction, sent retirement and other employee benefit plan funds funneling through a series of accounts to cover various types of expenditures, massive account overdrafts, and bank fees.

The defendant also caused employees of 1Point Solutions to prepare and to distribute via the United States Postal Service false quarterly 401(k) account statements to employers and participants. These statements falsely represented to each participant that the plan assets were safely invested as directed, when, in fact, most of the assets had never been invested and instead had been converted for the defendant’s own use.

The false statements were created by using sophisticated 401(k) administration software: 1Point Solutions employees entered accurate data regarding employee elections and contributions, and the software applied daily mutual fund performance to the data entered into the software. The resulting statement for each participant listed the specific mutual funds elected and contributions made, along with the total account balance for each quarter. However, the software and, therefore, the quarterly statements, were not linked to the actual bank accounts in any way, and were

fraudulent misrepresentations as to the actual disposition of the employee benefit plan funds. Though the statements reflected what would have been generally accurate account balances had the funds been invested as promised, these stated balances were fraudulent misrepresentations, as the reflected balances had never been properly held in trust or invested by 1Point Solutions.

This software also allowed 1Point Solutions to create and maintain a website through which plan participants could access their individual accounts on a daily basis to check on investment performance and account balances. The website, which pulled its data from the 401(k) software, falsely represented to each participant that the assets of the 401(k) retirement plan were invested in the stocks and mutual funds elected by each respective participant. The website falsely represented that the plan assets were safely invested, when, in fact, most of the assets had never been invested and had been converted for **BARRY R. STOKES'** own use.

In fact, in September 2006, the 1Point website and the most recent quarterly statements indicated that the value of the 401(k) plan assets entrusted to him were over \$16 million. However, investment performance accounted for approximately \$1.5 million of the number reflected in those statements. Because the defendant had never invested the 401(k) funds properly, actual rollovers, conversions, contributions, loans and withdrawals of 401(k) funds resulted in approximately \$14.5 million in missing 401(k) funds.

Between January 2002 and September 2006, **BARRY R. STOKES** continued to receive and to accept regular employer and employee fund contributions to the retirement plans without disclosing that the plan assets had been converted to his own use, and without disclosing that the plan assets had never been invested as directed. During this time period, a total of approximately \$22 million in ERISA funds were entrusted to the defendant and 1Point Solutions.

Through the execution of his scheme to defraud, **BARRY R. STOKES** did misappropriate, embezzle and convert over approximately \$14,500,000 in employee pension benefit plan assets (including rollovers, conversions and contributions) from over approximately 1,000 participants. The defendant also deprived these participants of the opportunity to invest and to grow their retirement accounts. The funds were misappropriated for a variety of purposes, none of which benefitted the participants of the retirement plans or the plans themselves. Purposes for which **BARRY R. STOKES** misappropriated plan assets included, but were not limited to, the following:

i. **BARRY R. STOKES** used embezzled employee benefit plan funds to amass an extensive collection of Japanese art, which he insured for approximately \$2,000,000;

ii. **BARRY R. STOKES** used embezzled employee benefit plan funds to purchase real estate, including buildings in Dickson, Tennessee, two of which were purchased and remodeled for use by 1Point Solutions as the company grew;

iii. **BARRY R. STOKES** used embezzled employee benefit plan funds as an improper source of capital to fund and to grow 1Point Solutions by improperly using plan assets to pay for overhead costs and operating expenses, payroll, marketing, salaries, expense accounts, vehicles, insurance and other business expenditures necessary to maintain the daily functioning of 1Point Solutions for several years;

iv. When certain employers sought to withdraw their 401(k) retirement plans from the custody and control of 1Point Solutions, in order to conceal the fact that he had misappropriated the funds, **BARRY R. STOKES** used assets from other 401(k) and employee benefit plans to pay off the employers whose plan assets had been misappropriated. Between January 2002 and September 2006, the defendant paid out approximately \$6 million in 401(k) funds

to employers who were withdrawing their funds from the defendant’s custody. The defendant determined the amount owed to these employers by referring to the false quarterly statements, and paid out funds in the amounts that would have been accurate had the funds ever been invested. By paying out amounts consistent with the false quarterly statements, the defendant was able to conceal the fact that the plan funds had never been properly invested.

v. **BARRY R. STOKES** used retirement plan assets to pay his own salary and his own personal expenses, including, but not limited, to paying for: an allowance to his wife; personal credit card bills; investments in a restaurant in Nashville, Tennessee; fund-raising parties and events; funding the establishment of a charitable foundation (“1 Point Foundation”); psychic readings; political campaign contributions; jewelry; and numerous personal Pay Pal purchases made over the Internet.

With respect to Counts 1 through 29 of the Superseding Indictment:

Each of these counts represents the victimization of an employer and its 401(k) participants. The defendant convinced each of these entities to use 1Point Solutions as its TPA for its 401(k) plans, knowing full well that he would not and did not properly safeguard the plan funds. Instead of investing the plan funds and acting as a fiduciary for those plans, the defendant embezzled the following plan funds. (The following approximate figures include rollovers, conversions, contributions, loans, withdrawals, fees and investment performance according to the software system that the defendant used to create the false quarterly statements.)

COUNT	Sponsor of Plan	Value of Plan	Number of Participants
1	Beck Arnley Worldparts, Corp.	\$6,079,677.46	147

COUNT	Sponsor of Plan	Value of Plan	Number of Participants
2	EFS, Inc.	\$1,208,919.14	59
3	Gonzales Memorial Hospital	\$1,201,076.96	176
4	Tatham & Associates	\$908,067.15	184
5	Cash Acme	\$787,752.92	68
6	Mastrapasqua Asset Management	\$661,064.77	29
7	Colbert & Winstead	\$558,393.15	20
8	Jimbo's Naturally	\$429,225.91	48
9	Hamilton Ryker, Inc.	\$257,350.84	43
10	Herbert Pounds	\$241,693.46	2
11	Dr. Jay S. Cohen	\$240,661.85	3
12	National Contact Marketing	\$235,417.11	4
13	1Point Solutions, LLC	\$172,183.31	42
14	Tennessee Association of Broadcasters	\$130,427.22	2
15	Atlanta Engineering	\$122,727.62	6
16	Angela Cotton, B.C.O. and Assoc.	\$119,479.51	3
17	Elemental Interactive	\$78,165.25	7
18	J. Michael's Clothiers	\$50,371.34	10
19	Altadena Valley Golf & Country Club	\$35,264.37	24

COUNT	Sponsor of Plan	Value of Plan	Number of Participants
20	Tennessee Democratic Party	\$23,217.87	7
21	Salem Nurse Midwives	\$193,061.69	8
22	Bay Institute	\$158,181.42	13
23	Grist Magazine	\$144,418.83	13
24	VIDA Health Communications	\$133,764.80	12
25	Oregon Natural Resources	\$107,773.55	17
26	Southern Alliance For Clean Engery	\$101,679.43	19
27	Guadelupe Veterinary Clinic	\$88,033.97	6
28	Summit Terminaling	\$50,441.45	2
29	Tennessee Hotel Lodging Association	\$22,984.56	3

In each instance, the funds were part of an employee pension benefit plan subject to Title I of ERISA. The defendant embezzled all of the funds described above from each of the participants listed, thereby willfully and unlawfully depriving the plan of the beneficial use of moneys, funds, securities and other assets by converting and stealing the assets of the plan. This taking was done with the specific intent to deprive the plan of its property and with full knowledge that the taking was wrong.

With Respect to Count 41

As part of his scheme to defraud, the defendant concealed his fraudulent activity by sending employers and participants false quarterly 401(k) account statements that made participants believe that their plan funds had been invested as directed. As described above, the statements were created using 401(k) software into which data related to each participant's account was entered. However, the software was not linked to the actual transactions in the 1Point Solutions bank accounts or the actual location or dissipation of any of the plan funds. As such, every statement mailed from 1Point Solutions to plan participants and employers was materially false. The statements indicated that all contributions had been invested as directed when, in fact, the defendant had made only limited investments, none of which ever corresponded with participant elections or complied with participant directives regarding how the retirement funds were to be invested. In fact, though the defendant was entrusted with approximately \$22 million in 401(k) contributions between 2002 and 2006 (approximately \$13.5 million of which flowed directly into the Mid-Atlantic Capital account), the defendant only invested approximately \$2.235 million of those ERISA funds. Moreover, the defendant's last purchase of any mutual fund shares occurred in early February 2005, and by the end of 2005, the defendant had liquidated all of his investment accounts by pulling the money out of the mutual fund investments, out of the Mid-Atlantic account and finally placing it into the AmSouth 401(k) account. Over the years, the defendant pulled approximately \$8.6 million out of the Mid-Atlantic Capital account by transferring it into the AmSouth 401(k) account. From there, the defendant shuttled the money through various AmSouth and Fifth Third bank accounts, keeping the 401(k) plan funds (and other employee benefit plan funds) for his own purposes. The quarterly statements did not reflect this funneling of ERISA funds through various accounts and were, therefore, false.

With respect to Count 41, on June 24, 2005, at the defendant's direction, a plan level quarterly statement was mailed from 1Point Solutions to Beck/Arnley Worldparts, Corp. ("Beck/Arnley") using the United States Postal Service. The statement indicated that the plan assets were intact and invested as directed by participants, when, in fact, the Beck/Arnley plan funds had been embezzled before June 24, 2005, and the defendant had never actually invested even one penny of the Beck/Arnley 401(k) plan funds. Thus, the statement mailed on June 24, 2005 contained materially false information, and the defendant created the statement and directed its mailing with the specific intent to defraud.

Between January 2002 and September 2006, thousands of fraudulent quarterly 401(k) statements were sent to employers and plan participants by the defendant or at the defendant's direction using the United States Postal Service.

With Respect to Counts 59, 60, 67-72:

Throughout the course of the defendant's scheme to defraud, the defendant freely and openly moved and shuttled money through a number of bank accounts. The money was moved for a variety of reasons, including for his own purposes and personal expenditures. The defendant, or his employees under his general direction, also moved huge sums of money to cover massive overdrafts and "bounced" checks that resulted from shortfalls caused by his expenditures and his embezzlement. Essentially, the defendant ran a "Ponzi"-type scheme in which he embezzled and spent one client's employee benefit plan funds, and then used another client's funds to repay the original victim. As a result, between early 2005 and September 2006, many of the 1Point Solutions bank accounts were massively overdrafted, resulting in hundreds of thousands of dollars in insufficient funds (NSF) and overdraft fees being paid to the financial institutions.

In most instances, the defendant, or other 1Point Solutions employees working under the defendant's general direction, sent electronic messages, or email, to various financial institutions to effect fraudulent transfers of ERISA funds and other employee benefit plan funds from one account to another. These transfers were often made to cover overdrafts or shortfalls in various accounts, and were often made under the pressure or the demands of representatives of the financial institutions who were concerned about the overdrafts. The emails provided instructions regarding how much money to transfer, the source account for the transfer, and the destination account.

In some instances, when overdrafts were large, various bank executives instructed 1Point Solutions to pull money from a funded account (e.g., from an account titled "401(k)") for transfer to the underfunded accounts (e.g., to an account titled "FSA"). The result was a constant and erratic churning of money through a series of accounts on a daily basis. The source of the money was never important to or considered by **BARRY R. STOKES** or anyone involved with the accounts: for example, in many cases, FSA contribution checks were used to pay shortfalls in HSA accounts, or 401(k) contribution checks were applied to cover overdrafts in FSA accounts. Likewise, for example, money was freely transferred out of accounts titled "401(k)" and into accounts titled "FSA." In executing his scheme, no account and no source of funds was off-limits, and all were used interchangeably to cover any 1Point Solutions debts or overdrafts.

On May 23-24, 2005, Beck/Arnley transferred approximately \$6,079,677.46 in 401(k) plan funds to the 1Point Solutions account at Mid-Atlantic. Once the Beck/Arnley 401(k) funds were received in the Mid-Atlantic account, the defendant immediately began to effect transfers out of the Mid-Atlantic account to other 1 Point accounts, and to other financial institutions. However, the defendant never invested any of the Beck/Arnley 401(k) funds as he was required to do.

Instead, almost immediately upon receiving these funds, the defendant began to move the 401(k) funds into other bank accounts, which enabled him to embezzle and to dissipate the funds on a variety of expenditures. For example, the ERISA funds were used to pay off other 401(k) clients whose accounts had been previously embezzled; to purchase art; to purchase real estate; and to replenish other 1Point Solutions accounts that were massively overdrawn at the time.

Counts 59 and 60: Two of the transactions dissipating Beck/Arnley funds occurred on May 31, 2005. On this date, the defendant sent an email to Mid-Atlantic Capital Group instructing Mid-Atlantic to transfer \$1,648,702.07 from the 1Point Solutions account to an account at Deutsche Bank for the benefit of Greenpeace, Inc., as the Greenpeace 401(k) plan had been embezzled and its ERISA funds entirely dissipated by the defendant prior to May 2005.

On May 31, 2005, the defendant also sent an email to Mid-Atlantic Capital Group instructing Mid-Atlantic to transfer \$2,241,695.62 to Mellon Bank for the benefit of Crosslin Supply, another company whose entire 401(k) plan had been embezzled by the defendant prior to May 2005. In the months leading up to these transfers, both Greenpeace and Crosslin had been demanding the return of their ERISA plan funds. However, despite such demands and the threat of legal action, the defendant had been unable to comply because he had embezzled and spent the entirety of both plan's funds. On May 31, 2005, the defendant sent the emails that facilitated the transfer of Beck-Arnley 401(k) plan funds to pay off Greenpeace and Crosslin Supply. By sending these emails, the defendant transmitted material fraudulent representations and writings by means of wire communication in interstate commerce with the specific intent to defraud in furtherance of his scheme and artifice to defraud.

Using similar emails and wire communications, the defendant eventually transferred the

remainder of the Beck/Arnley 401(k) funds out of the Mid-Atlantic accounts. Most often, the funds were shuttled to and through 1Point Solutions bank accounts at other financial institutions.

Counts 67 through 72: Emails, other wire communications, and account transfers like those described above facilitated the defendant's money laundering activity, as the defendant knowingly engaged in transactions involving financial institutions, all while knowing full well that the funds being transferred were criminally derived from embezzlement of ERISA funds, a specified unlawful activity for purposes of Title 18, United States Code, Section 1957, which proscribes money laundering.

With Respect to Counts 74 - 77:

On September 13, 2006, the Hon. William J. Haynes, Jr., United States District Judge for the Middle District of Tennessee, issued a Temporary Restraining Order which ordered the defendant to refrain from selling, transferring, encumbering, giving away, hiding or otherwise dissipating any assets held in the name of Barry R. Stokes or 1Point Solutions. The defendant was made aware of this order when he was properly served with a copy of the order on the evening of September 13, 2006. The defendant knowingly and intentionally disobeyed this order when he transferred and dissipated assets as follows:

1.) Loaded his art collection, insured for \$2 million, into his SUV and drove from Dickson, Tennessee to Austin, Texas, where he turned the collection over to his wife for storage at his father-in-law's home; and

2.) Cashed a series of checks on 1Point Solutions accounts, as listed in Counts 74-77 on page 21 of the Superseding Indictment. Each check was written and cashed for just under the \$10,000 Currency Transaction Reporting requirement, of which the defendant was aware and which

the defendant intentionally avoided.

With Respect to Relevant Conduct:

Defendant also acknowledges that for the purpose of determining the applicable advisory sentencing range under the United States Sentencing Guidelines (hereinafter “U.S.S.G.”), the following conduct, to which he stipulates, constitutes relevant conduct under U.S.S.G. §1B1.3. Furthermore, the defendant concedes that the victims listed below are also relevant to calculations of restitution and are entitled to restitution to the same extent as any victims associated with any counts of conviction:

1.) **Embezzlement of ERISA plans:** The defendant also embezzled the ERISA funds of the following plans and participants:

Sponsor of Plan	Value of Plan	Number of Participants
Clouds In My Coffee	\$127.11	1
Motherworks	\$1,127.15	1
Nashville Table	\$1,338.98	1
TN Association of Chiefs of Police	\$4,342.02	1
Hospital Alliance	\$5,054.58	1
B.W.	\$7,532.40	1
Remodeling By J	\$11,135.74	3
Brian Allen Photo	\$15,525.10	1
Ship Shape	\$19,138.63	1
Henry County Orthopedic Surgery and Sports Medicine	\$24,062.86	11
D.N.	\$26,500.55	1

Sponsor of Plan	Value of Plan	Number of Participants
Tuned In Broadcasting	\$31,719.59	11
P.M.	\$35,915.66	1
RCSim	\$36,434.06	2
Abcow	\$41,312.30	14
Codebench	\$52,812.96	5
Independent Press Assoc.	\$62,735.86	9
ELP	\$63,108.85	11
As You Sow	\$77,877.27	6
Grassworx	\$84,800.73	6

2.) **Embezzlement and Losses from other employee benefit plans:** The defendant also agrees that because of his embezzlement, he caused losses to be suffered to other employee benefit plan clients. Losses to other employee benefit plans, including FSA, HSA, Cobra, DCA and other accounts, amounted to approximately \$4,800,000. When combined with actual losses of \$14.5 million on the 401(k) side of the business, the defendant caused a total actual loss of approximately \$19,300,000.

3.) **Additional Relevant Conduct: Wire Fraud and Structuring**

The defendant kept his fraudulent scheme from being detected by using a variety of deceptive devices and practices to prevent clients of 1Point Solutions from being alerted to the fraud.

For example, in the fall of 2004, Crosslin Supply demanded an accounting of the entirety of its ERISA plan funds. To conceal the fact that he had already embezzled and dissipated the entirety of the Crosslin plan, the defendant sent Crosslin Supply a fax that purported to contain an accounting of plan funds in a spreadsheet. The spreadsheet listed the value of Crosslin ERISA funds invested

with each mutual fund. The numbers on the spreadsheet roughly matched the investment elections of the Crosslin participants. The fax also contained documents that the defendant claimed were account statements from various mutual funds. These statements reflected that 1Point Solutions had multi-million dollar investment accounts with each respective mutual fund entity.

In reality, the entire fax was a fraud, as the Crosslin Supply 401(k) plan funds had already been embezzled and the funds dissipated, and the defendant had no such sizable investment accounts at any mutual fund entity. The mutual fund statements contained in the fax had been created, counterfeited and doctored by the defendant to conceal his fraud.

In another instance, in February 2006, a 1Point Solutions client had received complaints from an FSA client as a result of 1Point Solutions FSA reimbursement checks bouncing and bank notifications of “insufficient funds.” When the Austin-based client demanded answers regarding this situation, the defendant and T.H., the Vice President of 1Point Solutions, asked J.P., a vice president in the Nashville offices of a financial institution, to send the disgruntled client a letter vouching for 1Point Solutions. The bank executive agreed, and wrote a letter that acknowledged the “good standing” of the 1Point Solutions accounts, despite his knowledge that the statement was not true: in reality, at the time that the letter was written and sent to the 1Point Solutions clients, the 1Point Solutions accounts had been suffering from massive and protracted overdrafts and negative account balances for several weeks. The bank executive printed the letter on official bank letterhead, and T.H. emailed a scanned version of the letter to the client. At the time that the letter was written and sent, the defendant, T.H. and J.P. all knew that the letter contained material misrepresentations, and that the 1Point Solutions accounts were not in “good standing” given the massive and protracted overdraft situation.

This statement of facts is provided to assist the Court in determining whether a factual basis exists for defendant's plea of guilty and criminal forfeiture and in assessing relevant conduct. The statement of facts does not contain each and every fact known to defendant and to the United States concerning defendant's and/or others' involvement in the offense conduct and other matters.

Sentencing Guidelines Calculations

10. The parties understand that the Court will take account of the United States Sentencing Guidelines (hereinafter "U.S.S.G."), together with other sentencing goals, and will consider the U.S.S.G. advisory sentencing range in imposing defendant's sentence. The parties agree that the U.S.S.G. to be considered in this case are those effective November 1, 2007.

11. For purposes of determining the U.S.S.G. advisory sentencing range, the United States and defendant agree, and agree to disagree, on the following points:

A.) Offense Level Calculations.

(1) Pursuant to Application Note 6 of U.S.S.G. § 2S1.1, all counts of conviction are grouped together pursuant to U.S.S.G. § 3D1.2(c), because they encompass closely related counts. Therefore, pursuant to U.S.S.G. § 3D1.3(a), the offense level applicable to the resulting Group is the highest offense level of the counts in the Group, which, in this case, is the offense level established by application of the Money Laundering guidelines in U.S.S.G. § 2S1.1(a)(1).

(2) Pursuant to U.S.S.G. § 2S1.1(a)(1), the base offense level for the Group is the offense level for the underlying offense from which the laundered funds were derived, determined here according to cross-reference to U.S.S.G. § 2B1.1, entitled "Theft, Embezzlement...and Offenses Involving Fraud and Deceit."

(3) Pursuant to U.S.S.G. § 2B1.1(a), the base offense level is 7;

(4) Pursuant to U.S.S.G. § 2B1.1(b)(1)(E), the offense level is increased by 20 levels because the loss was greater than \$7 million but less than \$20 million, based on actual losses of approximately \$19,300,000 and not including potential investment gains;

(5) Pursuant to U.S.S.G. § 2B1.1(b)(2)(C), the offense level is increased by 6 levels because the offense involved more than 250 victims;

(6) Pursuant to U.S.S.G. § 2B1.1(b)(9)(C), the offense level is increased by 2 levels because the defendant used sophisticated means in the execution of his scheme;

(7) Thus, pursuant to U.S.S.G. § 2S1.1(a), the base offense level for the Group is 35, as calculated by cross-reference to U.S.S.G. § 2B1.1.

(8) Pursuant to U.S.S.G. § 2S1.1(b), the offense level is increased by 1 level because the defendant was convicted under 18 U.S.C. § 1957.

(9) Pursuant to U.S.S.G. § 3B1.3, the offense level is increased by 2 levels because the defendant abused a position of trust.

(10) The parties agree to disagree about the applicability of a 2-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B). The government is free to seek and argue in favor of the application of this 2-level enhancement, and the defense is free to argue against it.

(11) Assuming defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the government, through his allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming defendant accepts responsibility as described in the previous sentence, the United States will move for an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b),

because defendant will have given timely notice 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.

B.) **Criminal History Category.** Based upon the information now known to the government (including representations by the defense), defendant has no known relevant criminal history, and will be a Criminal History Category I

Agreements Relating to Sentencing

12.) This Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that one of two possible specific sentencing ranges is the appropriate calculation of the guidelines in this case. If the court decides that the 2-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B) is applicable, as discussed in paragraph 11(A)(10), the offense level will be 37, which will result in an advisory guidelines range of 210 - 262 months. If the court decides that the enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B) is not applicable, the offense level will be 35, which will result in an advisory guidelines range of 168 - 210 months. Both sides agree that, pursuant to F.R.C.P. 11(c)(1)(C), no additional upward or downward adjustments to the offense level calculations are appropriate, and that the Court's guidelines calculations shall be governed by one of the two above sentencing guidelines ranges. Notwithstanding their agreement that the advisory guidelines range is either 168-210 months or 210-262 months, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. Furthermore, the defense is free to argue for any sentence, within or outside of the advisory guidelines range. The government agrees to argue for no more than the high end of the advisory guidelines range, which will be either 210 months or 268 months. If the Court accepts the

agreed guidelines calculations as set forth in paragraphs 11(A)(1-11) of this agreement, and therefore pronounces an advisory guidelines range of either 168-210 months or 210-268 months, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d). Nor may the defendant withdraw his plea solely on the grounds that the court imposes the 2-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(8)(B). If, however, the Court refuses to follow the guidelines calculations set forth herein, and does not pronounce a guidelines range of 168-210 months or 210-268 months, thereby rejecting the Plea Agreement, or otherwise refuses to accept defendant's plea of guilty, either party shall have the right to withdraw from this Plea Agreement.

Cooperation

13.) Defendant agrees to cooperate fully and truthfully with the United States and to provide all information known to him regarding any criminal activity. In that regard:

a.) Defendant agrees to respond truthfully and completely to any and all questions that may be put to him, whether in interviews, before a grand jury, or at any trial(s) or other court proceedings.

b.) Defendant agrees to be reasonably available for debriefings and pre-trial conferences as the United States may require.

c.) Defendant agrees to produce voluntarily any and all documents, records, writings, or materials of any kind in his possession or under his care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d.) Defendant consents to continuances of his sentencing hearing as requested by the United States.

14.) Nothing in this Plea Agreement requires the government to accept any cooperation or

assistance that defendant may choose to proffer. The decision as to whether and how to use any information and/or cooperation that defendant provides (if at all) is in the exclusive discretion of the United States. The government notes that, as of the date of the consummation of this plea agreement, the defendant has *not* cooperated or proffered to government investigators in any way. Since the time of his arrest, he has not cooperated with the government in any way or made any efforts to do so.

15.) Should the defendant decide to cooperate and/or to proffer to government investigators, the defendant must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes. Defendant understands that if he falsely implicates an innocent person in the commission of a crime, or exaggerates the involvement of any person in the commission of a crime in order to appear cooperative, or if defendant falsely minimizes the involvement of any person in the commission of a crime in order to protect that person, then defendant will be in violation of the Plea Agreement. Should the United States determine that defendant has failed to cooperate fully, has intentionally given false, misleading, or incomplete information or testimony, has committed or attempted to commit any further crimes, or has otherwise violated any provision of this Plea Agreement, the United States, may in its discretion and as appropriate in light of particular circumstances: (1) prosecute defendant for perjury, false declarations or statements, and obstruction of justice; (2) prosecute any other crime alleged in the indictment that would have otherwise been dismissed at sentencing; (3) charge defendant with other crimes; and (4) recommend a sentence up to the statutory maximum.

16.) This Plea Agreement is not conditioned upon charges being brought against any other individual. This Plea Agreement is not conditioned upon any outcome in any pending investigation.

This Plea Agreement is not conditioned upon any result in any future prosecution that may occur because of defendant's cooperation. This Plea Agreement is conditioned upon defendant providing full, complete, and truthful cooperation.

17.) The parties agree that the United States reserves its option to seek any departure from the applicable Sentencing Guidelines, pursuant to U.S.S.G. § 5K1.1 or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that such a departure is appropriate.

18.) If the United States in its sole discretion determines that defendant has cooperated fully, provided substantial assistance to law enforcement authorities, and otherwise complied with the terms of this Plea Agreement, the government shall file a motion pursuant to U.S.S.G. § 5K1.1 with the Court setting forth the nature and extent of defendant's cooperation. Defendant understands that at the time this Plea Agreement is entered, no one has promised that a substantial assistance motion will be made on defendant's behalf.

19.) If the United States files a motion pursuant to U.S.S.G. § 5K1.1, it is understood that (a) the United States reserves the right, in its sole discretion, to recommend that the Court impose a particular sentence or departure downward to a particular extent; and (b) the sentence to be imposed upon defendant is within the sole discretion of the Court. The United States cannot, and does not, make any promise or representation as to what sentence defendant will receive. The United States will inform the Probation Office and the Court of (a) this Plea Agreement; (b) the nature and extent of defendant's activities with respect to this case and all other activities of defendant that the United States deems relevant to sentencing; and (c) the nature and extent of defendant's cooperation, if any.

Restitution

20.) Regarding restitution, the parties acknowledge that the amount of restitution owed to victims will be in an amount determined by the court at sentencing, and that it will include the actual loss to victims of his offenses. The defendant also understands that the loss attributable to the defendant for restitution purposes may be greater than the loss attributed to him for purposes of calculating the advisory sentencing guidelines. Pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make restitution in this amount, minus any credit for funds repaid prior to sentencing. Restitution shall be due immediately. The exact amount of restitution owed to the victims will be determined by the court at sentencing, after all interested parties have had an opportunity to provide information to the Court relevant to the issue of restitution.

21.) Defendant agrees to pay the special assessment of \$4,200.00 with a check or money order payable to the Clerk of the U.S. District Court.

Forfeiture

22.) Further, defendant has subjected real and personal property to forfeiture, including approximately 200 pieces of art recovered by the U.S. Government in Austin, Texas, because that property represents proceeds of the defendant's unlawful activity. The defendant agrees to waive indictment and to plead guilty to the Information containing a forfeiture allegation related to the proceeds of his offenses, including the artwork identified above and a money judgment in the amount of the proceeds of his offenses. The parties agree that the amount of proceeds of his offenses is equal to the amount of restitution for which he is liable in this case, as determined by the Court. By his plea of guilty to this Information, and by entry of a guilty plea to Counts 1-29, 41, 59-60, 67-72, and 74-77 of the Superseding Indictment, defendant acknowledges that the property, and

substitute assets, is subject to forfeiture.

23.) Defendant agrees to the entry of a forfeiture judgment 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 property and further agrees to the seizure of this property so that this property may be disposed of according to law. Defendant is unaware of any third party who has an ownership interest in, or claim to, the property subject to forfeiture and will cooperate with the United States during the ancillary stages of any forfeiture proceedings to defeat the claim of a third party in the event a third party files a claim.

Presentence Investigation Report/Post-Sentence Supervision

24.) 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 United States Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, as well as any related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

25.) Defendant agrees to execute truthfully and completely a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the United States 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 U.S.S.G. § 3E1.1 and enhancement of his sentence for obstruction of

justice under U.S.S.G. § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

26.) This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Plea 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 Plea Agreement are limited to the United States Attorney's Office for the Middle District of Tennessee and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Plea Agreement.

27.) Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest, or penalties from defendant.

Waiver of Appellate Rights

28.) Defendant further understands he is waiving all appellate rights that might have been available if he exercised his right to go to trial. It is further agreed that (i) defendant will not file a direct appeal, nor litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any sentence within or below either of the guidelines ranges contemplated under F.R.C.P. 11(c)(1)(C), as set forth in paragraph 12 above, and (ii) the government will not appeal any sentence within or above either of those guidelines ranges. Such waiver does not apply, however, to a claim of involuntariness, prosecutorial misconduct, or ineffective assistance of counsel.

Other Terms

29.) 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.

30.) Defendant further agrees not to become or continue serving as an officer, director, employee, or institution-affiliated party, as defined in 12 U.S.C. Section 1813(u), (the Federal Deposit Insurance Act, as amended), or participate in any manner in the conduct of the affairs of any institution or agency specified in 12 U.S.C. Section 1818(e)(7)(A), without the prior approval of the appropriate federal financial institution regulatory agency as defined in 12 U.S.C. Section 1818(e)(7)(D).

31.) As a condition of the agreement, the defendant agrees that, pursuant to the provisions of Title 29, United States Code, Section 1111, he will be enjoined from serving in any position related to any employee benefit plan. The defendant further understands and agrees that, if his guilty plea is accepted, he will be convicted of criminal felonies involving embezzlement, dishonesty and breach of trust. If he thereafter willfully engages in any business relationship with an employee benefit plan, he will not only be in breach of this agreement but will be in violation of 18 U.S.C. § 1111, a criminal offense punishable by a fine of up to \$10,000 and not more than 5 years in prison, or both.

32.) Should defendant engage in additional criminal activity after he has pled guilty but prior to sentencing, defendant shall be considered to have breached this Plea Agreement, and the government at its option may void this Plea Agreement.

Conclusion

33.) Defendant understands that the superseding indictment and this Plea Agreement will be filed with the Court, will become matters 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 Plea Agreement is a violation of the Plea Agreement. Defendant further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Plea Agreement, or may move to resentence defendant or require defendant's specific performance of this Plea Agreement.

35.) 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.

36.) 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.

37.) No promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement, and none will be entered into unless memorialized in writing and signed by all of the parties listed below.

38.) Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending indictment. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines that may apply in my case. I have read

this Plea Agreement and carefully reviewed every part of it with my attorney. I understand this Plea Agreement, and I voluntarily agree to it.

Date: _____

Barry R. Stokes
Defendant

39.) Defense Counsel Signature: I am counsel for defendant in this case. I have fully explained to defendant his rights with respect to the pending indictment. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements, and I have fully explained to defendant the provisions of those guidelines that may apply in this case. I have reviewed carefully every part of this Plea Agreement with defendant. To my knowledge, defendant's decision to enter into this Plea Agreement is an informed and voluntary one.

Date: _____

Paul Bruno

Date: _____

David Baker

Respectfully submitted,

Edward M. Yarbrough
United States Attorney

By: _____

Courtney D. Trombly
Assistant U.S. Attorney

Eli Richardson
Criminal Chief