

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No.: 08-302 (PAM)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) PLEA AGREEMENT AND
) SENTENCING STIPULATIONS
MICHAEL CATAIN,)
)
 Defendant.)

The United States of America and Michael Catain (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

1. **Charges.** The defendant agrees to plead guilty to Count 1 of the Information, which charges the defendant with conspiracy to commit money laundering, in violation of Title 18, United States Code, Section 1956(h).

2. **Factual Basis.**

From in or about 2002 through September 2008, the defendant conspired with another to launder proceeds of fraud.

In or about 2002, the defendant started a company, Enchanted Family Buying Company ("EFBC"), a Minnesota Corporation. EFBC was a shell corporation and had no real operations. In or about 2002,

the defendant opened a bank account in the name of EFBC at Anchor Bank, a federally insured bank in Minnesota. At the request of Thomas Petters, the owner and president of another company, Petters Company, Incorporated, ("PCI") the defendant began receiving funds into the EFBC account at Anchor Bank for PCI. These funds were wired into the EFBC account at Anchor Bank from third-party investors that loaned money to PCI. These third-party investors were advised that the funds were being sent to EFBC for the purchase of consumer electronics by PCI. In fact, the defendant wired almost all of the funds back to PCI.

Starting in or about 2002 until in or about September 2008, approximately \$12 billion was routed through the EFBC account and re-directed to the account of PCI. Multiple times each month, wire transfers were made into the EFBC account. Wire transfers into the EFBC account from lenders ranged from approximately \$2 million to approximately \$25 million. Based on an agreement with Thomas Petters, the defendant kept a percentage of the funds run through the EFBC account as a "commission." After each wire transfer into the account, the defendant, or someone working at his direction, caused a wire transfer of the funds, less a commission of between .025 and .05 percent, from the EFBC account to the account of PCI.

The defendant knew that the funds wired into the EFBC account came from investors that were providing loans to PCI. The defendant knew that Thomas Petters and PCI made false

representations to investors about EFBC and the purpose of the funds wired to EFBC. The defendant knew that the wire transfers to the EFBC account were purported to be for the purchase of merchandise from EFBC by PCI. The defendant knew that PCI made no purchases of merchandise from EFBC. The defendant knew that the EFBC account was being used by Thomas Petters and PCI to conceal or disguise the nature, source, ownership and control of the funds and to promote Thomas Petters's fraud scheme.

From in or about 2002 until in or about September 2008, the defendant obtained over \$3 million dollars in commissions for his role in the scheme. The vast majority of the fraud proceeds went to PCI and Thomas Petters.

3. **Waiver of Indictment.** The defendant agrees to waive indictment by a grand jury on these charges and to consent to the filing of a criminal information. The defendant further agrees to execute a written waiver of his right to be indicted by a grand jury on this offense.

4. **Waiver of Pretrial Motions.** The defendant understands and agrees that he has certain rights to file pre-trial motions in this case. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the defendant knowingly, willingly, and voluntarily gives up the right to file pre-trial motions in this case.

5. **Statutory Penalties.**

The parties agree that Count 1 of the Information carries statutory penalties of:

- a. a term of imprisonment of up to 20 years;
- b. a criminal fine of up to the greater of \$250,000.00 or twice the amount of gain or loss;
- c. a term of supervised release of up to three years;
- d. a special assessment of \$100.00, which is payable to the Clerk of Court prior to sentencing; and
- e. the costs of prosecution (as defined in 28 U.S.C. §§ 1918(b) and 1920).

6. **Revocation of Supervised Release.** The defendant understands that, if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

7. **Guideline Calculations.** The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, et seq. The parties also acknowledge that the Court will consider the United States Sentencing Guidelines to determine the appropriate sentence and stipulate to the following guideline calculations:

- a. **Base Offense Level.** The parties agree that the base offense level for these offenses is 38,

because the value of laundered funds exceeded \$400 million. (U.S.S.G. § 2S1.1(a)(2)).

- b. Specific Offense Characteristics. The parties agree that the offense level should be increased by 2 levels, because the conviction is under 18 USC § 1956. (U.S.S.G. § 2S1.1(b)(2)(B)).
- c. Acceptance of Responsibility. The government agrees to recommend that the defendant receive a 3-level reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, the defendant understands and agrees that this recommendation is conditioned upon the following: (i) the defendant testifies truthfully during the change of plea hearing, (ii) the defendant cooperates with the Probation Office in the pre-sentence investigation, (iii) the defendant commits no further acts inconsistent with acceptance of responsibility and to notify any lender of any false statement made by the defendant, and (iv) the defendant complies with this agreement, fully identifies all assets and makes good faith efforts to make restitution to his victim. (U.S.S.G. §3E1.1). The parties agree that other than as provided for herein no other Chapter 3 adjustments apply.
- d. Criminal History Category. Based on information available at this time, the parties believe that the defendant's criminal history category is I. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing.
- e. Guideline Range. If the offense level is 37, and the criminal history category is I, the Sentencing Guidelines range is 210-240 months imprisonment (based on the statutory maximum sentence).
- f. Fine Range. If the adjusted offense level is 37, the fine range is \$20,000.00 to \$200,000.00. (U.S.S.G. § 5E1.2(c)(3)).

- g. Supervised Release. The Sentencing Guidelines require a term of supervised release of between two and three years. (U.S.S.G. § 5D1.2).
- h. Departures and Sentencing Recommendations. The parties reserve the right to make motions for departures or variances from the applicable guideline. Among other things, the defendant reserves the right to argue that the offense level overstates the seriousness of the offense, because the defendant received only a small fraction of the proceeds; the defendant also reserves the right to argue for a downward departure and/or variance based on his age and health.

8. **Discretion of the Court**. The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable guideline factors and the applicable criminal history category. The Court may also depart from the applicable guidelines. If the Court determines that the applicable guideline calculations or the defendant's criminal history category is different from that stated above, the parties may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

9. **Special Assessments**. The Guidelines require payment of a special assessment in the amount of \$100.00 for each felony count of which the defendant is convicted. U.S.S.G. § 5E1.3. The defendant agrees to pay the special assessment prior to sentencing.

10. **Restitution.** The defendant understands and agrees that the Mandatory Victim Restitution Act, 18 U.S.C. §3663A, applies and that the Court is required to order the defendant to make restitution to the victim of his crime, which include victims of the fraud scheme that forms the specified unlawful activity underlying the money laundering charges in this matter.

The defendant represents that he will fully and completely disclose to the United States Attorney's Office the existence and location of any assets in which he has any right, title, or interest. The defendant agrees to assist the United States in identifying, locating, returning, and transferring assets to be forfeited and for use in payment of restitution and fines ordered by the Court. The defendant represents that the financial statement to be provided to the United States Attorney's Office is accurate, truthful and complete.

The defendant agrees to submit to a deposition to identify all of his assets for forfeiture, restitution and fines ordered by the Court. If requested by the United States, the defendant agrees to submit to a polygraph examination to determine whether he has truthfully disclosed the existence of all of his assets.

11. **Forfeiture.** The government reserves its right to proceed against any of the defendant's assets if said assets represent real or personal property involved in violations of the laws of the United States or are proceeds traceable to such property. The

defendant agrees that all funds he received from PCI are proceeds of the fraud, and are, therefore, subject to forfeiture. The defendant asks that the government allow such proceeds to be used for restitution.

12. **Cooperation**. The defendant has agreed to cooperate with law enforcement authorities in the investigation and prosecution of other suspects. The defendant has provided information to law enforcement regarding the fraud and other participants, including the owner and president of PCI, Thomas Petters. This cooperation includes, but is not limited to, being interviewed by law enforcement agents, submitting to a polygraph examination if the government deems it appropriate, and testifying truthfully at any trial or other proceeding involving other suspects. If the defendant cooperates fully and truthfully as required by this agreement and thereby renders substantial assistance to the government, the government will, at the time of sentencing, move for a downward departure under Guideline Section 5K1.1. The government also agrees to make the full extent of the defendant's cooperation known to the Court. The defendant understands that the government, not the Court, will decide whether the defendant has rendered substantial assistance. The government will exercise its discretion in good faith. The defendant also understands that there is no guarantee the Court will grant any such motion for a downward departure, and the defendant understands that the amount

of any downward departure is within the Court's discretion. In the event the government does not make or the Court does not grant such a motion, the defendant may not withdraw this plea based upon that ground. Finally, the defendant understands that the government is not required to accept any tendered cooperation on the defendant's part. If the government, in its sole discretion, chooses not to accept tendered cooperation, the defendant will not receive a sentence reduction for such tendered cooperation and will not be allowed to withdraw from the plea agreement based upon that ground.

13. **Complete Agreement**. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Date:

FRANK J. MAGILL, JR.
United States Attorney

BY: _____
JOSEPH T. DIXON, III
JOHN R. MARTI
TIMOTHY C. RANK
Assistant U.S. Attorneys
Attorney ID No. 0283903

Date:

MICHAEL CATAIN,
Defendant

Date:

MICHAEL COLICH,
Counsel for Defendant