

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

MARK STEVEN DIAMOND

No. 16CR54-1

Judge Franklin U. Valderrama

**PLEA AGREEMENT**

1. This Plea Agreement between the Acting United States Attorney for the Northern District of Illinois, MORRIS PASQUAL, and defendant MARK STEVEN DIAMOND, and his attorneys, JEFFREY B. STEINBACK and TIMOTHY R. ROELLIG, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

**Charges in This Case**

2. The second superseding indictment in this case charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts 1-4, 7-9).

3. Defendant has read the charges against him contained in the second superseding indictment, and those charges have been fully explained to him by his attorneys.

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

**Charge to Which Defendant Is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following count of the second superseding indictment: Count Seven, which charges defendant with wire fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1343.

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Seven of the second superseding indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

Beginning in or about 2008, and continuing until in or about February 2015, in the Northern District of Illinois, Eastern Division, defendant MARK STEVEN DIAMOND, along with Cynthia Wallace, Matthew Fefferman, Gary Thomas Bohn, and Forrest C. Fawcett devised and participated in a scheme to defraud and to obtain money by means of materially false and fraudulent representations and promises, and the concealment of material facts, which scheme affected financial institutions. For purposes of executing this scheme, DIAMOND, caused wire transmissions to be sent in interstate commerce, including an interstate wire transfer through the Fedwire System on December 16, 2013, from a financial institution, namely mortgage lender American Advisors Group, through the Fedwire Funds Transfer System, in the amount of approximately \$66,404, to fund the reverse mortgage loan of Hersey

Smith, in violation of Title 18, United States Code, Section 1343.

***Scheme to Defraud Victims and Lenders***

DIAMOND was an Illinois licensed loan originator and president of OSI Financial Services, Inc. (OSI), an Illinois licensed mortgage brokerage, and of United Residential Services & Real Estate, Inc. (URS), a home repair general contractor, both of which had offices at 2355-57 N. Damen, Ave., in Chicago, Illinois.

On November 20, 2003, the United States District Court for the Northern District of Illinois entered an order permanently enjoining DIAMOND and OSI from, among other things, conducting any loan closing, and requiring an independent settlement agent conduct the closing for any loan DIAMOND or OSI brokered.

From approximately 2006 through 2012 and then from approximately 2013 through approximately 2015, DIAMOND employed co-defendant Cynthia Wallace to solicit home repair customers for URS. Diamond instructed Wallace to concentrate on the West-side of Chicago, in primarily African-American neighborhoods, because homes in this area were generally older, had not been refinanced, and thus had equity. Diamond specifically instructed Wallace to ask the homeowners how much, if anything, they owed on their homes. Wallace solicited customers for URS over the phone and by going to areas on the West-side initially selected by DIAMOND and walking from home to home making the URS sales pitch in person. DIAMOND paid Wallace a salary, a commission for each homeowner she successfully solicited, and

allowed Wallace to live rent-free in a home that DIAMOND owned at 8036 S. Princeton in Chicago.

Once Wallace identified potential home repair customers, she provided the homeowners' addresses and contact information to DIAMOND, who would check county websites for recent mortgages, in order to assess whether a homeowner had equity in their home, and to run the homeowners' credit.

When it appeared that a homeowner had a significant amount of home equity, DIAMOND visited the home, often accompanied by Wallace. Although the homeowners had specific repairs that they wanted to be made, DIAMOND attempted to convince the homeowner that URS should perform a greater dollar amount of work that was close to the amount of the homeowner's anticipated equity. DIAMOND made false promises to perform repair work, in that he did not intend to perform, and did not perform all of the work that he promised. On many occasions, the homeowners, due to age, disability, and/or lack of financial sophistication, did not know or understand how much work they had agreed to or how much equity they had in their respective properties.

The homeowners generally did not have sufficient funds available to pay URS for the home repairs. Although DIAMOND was not a mortgage broker or loan originator, DIAMOND instructed Wallace initially to suggest to the homeowner a mortgage refinance to pay for the repair work to be performed by URS. By

approximately 2009, DIAMOND began instructing Wallace to suggest that the homeowner obtain a reverse mortgage to obtain funds to pay URS for the repairs.

A reverse mortgage loan, also known as a home equity conversion mortgage, was a type of refinance loan through which homeowners aged 62 or over borrowed equity in their primary residence, which did not become due until the homeowner died. A reverse mortgage loan was available only if all borrowers were title holders and were age 62 or over. To be eligible for a reverse mortgage loan, the borrower was required to receive reverse mortgage counseling which explained the fees, costs and ramifications of obtaining a reverse mortgage loan. Lenders required loan applicants to provide truthful information in the application, which information was material to the lender's approval, terms and funding of the loan. Reverse mortgage loan payouts were in the form of a line of credit or lump sum, with limits on the size of the lump sum payout. Prior liens were paid off out of loan closing proceeds, so that the reverse mortgage lender received a first lien.

When it became apparent that many homeowners were not interested in a reverse mortgage, DIAMOND instructed Wallace not to mention the term "reverse mortgage", but instead to falsely represent that URS's repair work was part of a government program. Wallace followed DIAMOND's instructions when soliciting home repairs to be performed by URS by both concealing that the homeowners would be obtaining reverse mortgages and falsely representing that the repairs were part of a government program.

DIAMOND falsely represented to certain homeowners that he had been sent by “the city” and that the home repairs would not cost the homeowner any money, such as by falsely promising that the repairs would be paid for through a government program, including a free Chicago porch repair program. In certain instances, DIAMOND concealed from the homeowners that they were applying for reverse mortgage loans by falsely representing to the homeowners that they needed to sign certain documents to start the repair work, when, in fact, the documents that DIAMOND caused them to sign were related to applying for a reverse mortgage loan.

DIAMOND caused homeowners to apply for reverse mortgage loans brokered by Harbor Financial Group, Ltd. (Harbor Financial). Co-defendant Fefferman was an Illinois licensed loan originator and president of Harbor Financial, an Illinois licensed mortgage brokerage, and president and assistant vice president, respectively, of Marmat Enterprises, Inc. (Marmat), and of Holloway Lumber & Construction Company, Inc. of Indiana, dba Holloway Home Construction and Holloway Remodeling (Holloway), both of which were home repair general contractors, and all three of which had offices in Calumet City, Illinois., with which co-defendant Matthew Fefferman was a loan originator.

Although DIAMOND had been prohibited from conducting any loan closing and could not originate loans without an independent settlement agent, Fefferman allowed DIAMOND to offer loans and take applications in the name of Harbor Financial from home repair customers of URS. DIAMOND was aware that Fefferman

then signed and caused employees of Harbor Financial to sign loan applications falsely representing that Fefferman or a Harbor Financial employee was the originator of loans for which DIAMOND had in-fact originated the loans by offering the loans and taking the applications. DIAMOND was also aware that Fefferman caused Harbor Financial Group to submit to lenders these fraudulent loan applications containing these and other materially false statements, including that Fefferman had interviewed the applicant. Fefferman further allowed DIAMOND to process the loans that DIAMOND fraudulently originated by ordering appraisals and otherwise deal directly with the lenders on behalf of Harbor Financial. These fraudulent loan applications included reverse mortgage loan applications.

At about the time that Fefferman began allowing DIAMOND to use Harbor Financial to fraudulently broker loans, DIAMOND showed Fefferman how he conducted his home repair business. DIAMOND would convince the homeowner to agree a contract in which the price would equal the amount of money that Diamond estimated the borrower could receive as reverse mortgage proceeds. Thus, the type and cost of home repairs were not based on the repairs that the homeowner requested or needed; but instead, were a function of the amount of equity that DIAMOND calculated would be available in the form of a payout from a reverse mortgage loan secured by the borrowers' homes. DIAMOND would not tell the borrowers that the repair contract would match the amount of equity in their house.

DIAMOND often instructed Wallace to undermine the counseling that is required before a homeowner can obtain a reverse mortgage loan, so that the homeowner would not find out through the counseling that the homeowner was not required to pay the proceeds of the reverse mortgage loan to URS. On DIAMOND's instructions, Wallace impersonated female homeowners in telephone counseling sessions. DIAMOND impersonated male homeowners. DIAMOND was aware that sometimes the impersonation was not necessary because certain homeowners did not understand the process or what was going on, regardless of what the counselor told them.

DIAMOND also instructed Wallace to attend the loan closings to make sure that the closing proceeded without incident and to take all of the borrower's documents, so that the homeowner would not have them and thus learn the true nature of the transaction. On DIAMOND's instructions, on June 24, 2014, Wallace attended the closing of Dorothy Hillman at 811 North Lowell, pretending to be Hillman's granddaughter. DIAMOND understood that Hillman did not understand the reverse mortgage documents that she had signed, as Hillman did not want a reverse mortgage and, based on the misrepresentations that DIAMOND had instructed Wallace to make, thought that she was participating in a free government program.

DIAMOND was able to divert the reverse mortgage proceeds checks from homeowners to himself. DIAMOND had Wallace pick-up the loan proceeds' checks



from the title company, one of which was Able Title Company, which was run by co-schemer Forrest C. Fawcett, who diverted the proceeds checks from the homeowners to DIAMOND. DIAMOND would also cause the homeowners to unknowingly sign a document that authorized URS to receive the proceeds check. On DIAMOND's instructions, Wallace would also drive homeowners to the title company to pick up the check and then bring the homeowner and the check back to URS. DIAMOND would trick homeowners who did not want to apply for reverse mortgages into signing the proceeds checks and other reverse mortgage documentation, by making them think that they were only signing repair contracts with URS. DIAMOND understood that the majority of the homeowners did not know that they were endorsing the reverse mortgage proceeds checks over to URS and others who did know did they were getting a reverse mortgage loan did so on misrepresentations that the funds were going into an escrow account.

In or about April 2010, Wallace solicited Curtis Story and Jeanette Story for URS to do home repairs at 3118 West Lexington Street, knowing that DIAMOND would make false promises to do home repair work. Wallace subsequently brought DIAMOND to the Story residence and DIAMOND convinced Curtis Story to have additional home repair work done that would purportedly be paid for by the proceeds of a reverse mortgage loan. Curtis Story informed DIAMOND that he, Curtis Story, was hesitant to obtain a reverse mortgage loan if the entire loan proceeds were disbursed directly to DIAMOND. On or about April 28, 2010, DIAMOND brought

Forrest Fawcett to Curtis Story's home and caused Fawcett to falsely promise Curtis Story that he, Fawcett, would cause \$50,000 of Curtis Story's loan proceeds to be held in Able Title's escrow account, and provided Curtis Story with documents falsely representing that \$50,000 of Curtis Story's loan proceeds was to be held by Able Title. By these false representations, DIAMOND and Fawcett caused Curtis Story to agree to obtain a reverse mortgage loan in the amount of approximately \$98,177.

On or about May 4, 2010, DIAMOND caused Curtis Story and Jeanette Story to obtain a reverse mortgage loan, which was funded by the lender, Urban Financial Group, by an interstate wire transfer of approximately \$97,391. After the loan closed, DIAMOND and Wallace brought the \$90,674 proceeds check to Curtis Story and attempted to persuade Curtis Story to sign the check over to DIAMOND. When Curtis Story refused to let DIAMOND hold the reverse mortgage loan proceeds, DIAMOND, Wallace, and Fawcett, falsely represented that reverse mortgage loan proceeds would be held in Able Title Company's escrow account in order to obtain Story's endorsement. At DIAMOND's request, Fawcett then caused Able Title Company to disburse all of Fawcett's \$90,674 loan proceeds to DIAMOND. DIAMOND never finished the home repair work that he promised to do for Curtis Story.

In April 2010, the Illinois Department of Financial and Professional Regulation revoked Harbor Financial's residential mortgage license because of its arrangement with DIAMOND. Once DIAMOND could no longer use Harbor to broker loans for URS customers, DIAMOND began using American Fidelity Financial

Services, Inc. (American Fidelity), to broker loans for URS home repair customers. Co-defendant Gary Bohn, an Illinois licensed loan originator, was employed by American Fidelity.

Although DIAMOND had been prohibited from being involved in loan closings or brokering loans without an independent settlement agent, DIAMOND reached an agreement with Bohn similar to the agreement that DIAMOND had with Fefferman. Bohn allowed DIAMOND to act as the loan officer, offer reverse mortgage loans and take applications in the name of American Fidelity from home repair customers of URS. DIAMOND was aware that Bohn then signed and caused employees of American Fidelity to sign loan applications falsely representing that Bohn was the originator of loans for which DIAMOND had in-fact originated the loans by offering the loans and taking the applications. DIAMOND was aware that Bohn caused American Fidelity to submit to lenders these fraudulent loan applications containing these and other materially false statements, including that Bohn had interviewed the applicant.

DIAMOND learned from Bohn that American Fidelity had its own Appraisal Management Company (AMC), something DIAMOND understood was against government rules designed to ensure that appraisals were conducted impartially. In addition to the commission Bohn earned from American Fidelity, DIAMOND paid Bohn a fee for each appraisal of homes of loan applicants for which DIAMOND had repair contracts, because AMC had an appraiser who would cause appraisals to be at

the high end of the possible range of value, thereby allowing a customer to obtain a reverse mortgage at a higher amount, from which DIAMOND would price his repair contracts.

Later in the scheme, Diamond started to record liens on the homeowner's homes, in which Diamond falsely represented that URS had already completed home repairs and was entitled to be paid for them. In this way, Diamond caused URS to be paid directly at the closing, eliminating the need for Diamond to get the homeowner to sign off on the proceeds check.

In 2013, DIAMOND learned from Bohn that there were new rules limiting the amount of money that could be paid out to reverse mortgage borrowers at closing, which would in turn limit their ability to obtain the borrower's loan proceeds. Bohn further explained to DIAMOND that there was not a limit on money paid at closing to payoff prior liens.

In order to circumvent HUD rules limiting reverse mortgage lump sum payouts, DIAMOND falsely represented to the reverse mortgage lenders that he had already made all of the home repairs and was entitled to be paid directly by the reverse mortgage lender, including by preparing loan applications and other documents falsely representing that one of DIAMOND's business entities was a creditor of the homeowner, filing false liens, and submitting false payoff letters.

From 2013 through 2014, DIAMOND and Bohn caused fraudulent loan applications to be prepared and submitted to lenders which falsely represented that

URS or Peszko Construction, a fictitious entity, was a creditor of the home owner borrower based on having performed repairs on the home securing the reverse mortgage applied for and caused liens to be publicly filed on homes which falsely represented that URS or Peszko Construction had performed and had not been paid for repairs. As a result, DIAMOND and Bohn fraudulently caused lenders to make reverse mortgage loans to at least fifteen homeowner victims, out of which DIAMOND received at closing approximately \$757,211 to pay off URS's or Peszko's fraudulent liens.

DIAMOND acknowledges that the funding of the fraudulently-obtained reverse mortgage loans often involved interstate wire transmissions. DIAMOND further acknowledges that American Advisors Group was an organization which finances debt secured by an interest in real estate, whose activities affected interstate commerce.

DIAMOND acknowledges that he victimized at least seventeen homeowners by fraudulently obtaining a total of approximately \$839,000 from financial institutions in the following amounts in the form of reverse mortgage loan proceeds through filing false liens on their homes (in Chicago unless otherwise indicated) included:

Hersey Smith (age 70 and blind) \$23,000 at 631 North Lotus Ave.;  
Alice Boyd (age 87) \$69,679 at 4706 West Adams St.;  
Lee Smothers (age 62) \$18,000 at 948 North Karlov Ave.;  
Ethola Jordan (age 76) \$47,200 at 5223 West Adams St.;  
Bruce Cockrell (age 62) \$58,000 at 743 North Spaulding Ave.;  
Fletcher Heard (age 64) \$65,000 at 4947 West Cortez St.;

Russell Halton (age 80) \$68,200 at 160 North Leamington Ave.;  
Eddie Tribbett (age 80) \$79,406 at 538 North Hamlin Ave.;  
Bertha Davis (age 97) \$63,991 at 4126 West West End Ave.;  
Pearlie Windfield (age 82) \$36,000 at 4321 West Van Buren St.;  
J.C. Halums (age 69) \$69,439 at 169 North Lockwood Ave.;  
Dorothy Hillman (age 79) \$70,000 at 811 North Lorel Ave.;  
Ida Christopher (age 87) \$51,500 at 4333 West West End Ave.;  
Clara White (age 68) \$35,500 at 5048 West Erie St.;  
Walker Williams Sr. (age 79) \$38,295 at 4815 West Huron St.;  
Mary Johnson (age 73) \$30,900 at 4823 W. Race, St.; and  
Lee Wilson (age 72) \$14,452 at 5035 W. Erie St.

DIAMOND acknowledges that the fraudulent scheme caused significant financial hardship to at least five victims. DIAMOND understands that it is the government's position that there were at least approximately 80 victims, and that his actions caused at least approximately \$6 million in loss.

After DIAMOND fraudulently obtained the reverse mortgage loan proceeds in advance of performing the home repairs, the amount and quality of the home repairs DIAMOND performed was a function of the extent to which the homeowner or family members complained to DIAMOND.

### **Maximum Statutory Penalties**

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 30 years' imprisonment. Pursuant to Title 18, United States Code, Section 3561, defendant may not be sentenced to a term of probation for this offense. This offense also carries a maximum fine of \$1,000,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater.

Defendant further understands that the judge also may impose a term of supervised release of not more than five years.

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

c. Pursuant to Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

### **Sentencing Guidelines Calculations**

8. Defendant understands that, in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as specified below:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the 2023 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 7, pursuant to Guideline § 2B1.1(a)(1).

ii. It is defendant's position that the total loss attributable to defendant, after accounting for credits against loss, is more than \$550,000, but less than \$1.5 million, and that therefore, pursuant to Guideline § 2B1.1(b)(1)(H), the offense level is increased by 14. Defendant understands that it is the government's position that the loss attributable to the defendant is more than \$3.5 million, but less than \$9.5 million, and that therefore, pursuant to Guideline § 2B1.1(b)(1)(J), the offense level is increased by 18.

iii. Pursuant to Guideline § 2B1.1(b)(2)(B), the offense level is increased by 4, because the offense conduct in which defendant was involved and which was foreseeable to defendant resulted in substantial financial hardship to at least 5 victims.



iv. It is the government's position that, pursuant to Guideline § 2B1.1(b)(9)(A), the offense level is increased by 2, because the defendant misrepresented that he was acting on behalf of a government agency, namely, the City of Chicago, and falsely promising that the repairs would be paid for through a government program, and defendant's criminal conduct was in violation of a prior judicial order, injunction and decree, namely the November 20, 2003, United States District Court for the Northern District of Illinois order described above. Defendant reserves the right to object to the application of this guideline increase.

v. Pursuant to Guideline § 2B1.1(b)(10)(C), the offense level is increased by 2, because the offense involved sophisticated means, including multiple false documents, and defendant intentionally engaged in or caused the conduct constituting sophisticated means.

vi. Pursuant to Guideline § 3A1.1(b)(1), the offense level is increased by 2, because the defendant knew or should have known that a victim of the offense was unusually vulnerable due to age and physical and mental condition.

vii. It is the government's position that, pursuant to Guideline § 3B1.1(b), the offense level is increased by 3 levels because the defendant was a manager and supervisor of criminal activity that involved five or more persons, namely defendant, Wallace, Fefferman, Fawcett, and Bohn, or was otherwise extensive, in that, among other things, defendant supervised codefendant Wallace in

the recruitment of victims and fraudulently obtaining reverse mortgage loans. Defendant reserves the right to object to the application of this guideline increase.

viii. Defendant and the government agree that, based on defendant's conduct leading to the revocation of his pre-trial release and the similarity of that conduct to the charged offense, defendant has clearly not demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), and that a two-level reduction in the offense level is not appropriate.

ix. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

c. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, if the Court accepts the government's position on the guideline applications, it is the government's position that the anticipated offense level is 38 which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 235 to 293 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. If the Court calculates the guideline range based only upon the applications to which defendant agrees herein,

the anticipated offense level is 29 and the anticipated advisory guideline range is 87 to 108 months.

d. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by

such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

### **Agreements Relating to Sentencing**

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. The defendant stipulates that he engaged in the conduct as alleged in the government's Emergency Motion to Revoke Pretrial Release (Dkt #360). The government agrees not to seek additional charges against defendant based on the facts supporting the order revoking defendant's pre-trial release on October 5, 2023 (Dkt #367) and not to seek an additional consecutive sentence under Title 18, United States Code, Section 3147. Defendant also agrees to pay restitution as ordered by the Court to the victim of defendant's conduct leading to the revocation of defendant's pre-trial release, under Title 18, United States Code, Section 3663(a)(3).

14. If, in its sole discretion, the government determines subsequent to defendant's sentencing in this case that defendant has provided substantial assistance, as described in Fed. R. Crim. P. 35(b)(2), which assistance has not been

taken into account by the parties in fashioning the sentencing agreement in this case, and is not taken into account by the Court in imposing sentence, then the government will move for a reduction in his sentence pursuant to Fed. R. Crim. P. 35(b)(4). Defendant understands that it is solely within the government's discretion whether to move for a reduction in his sentence, and he agrees not to challenge the government's decision if it determines in its discretion that such a motion is not appropriate. Defendant also understands that should the government seek such a reduction as outlined above, it is solely within the Court's discretion to grant or reject such a request, and to determine the extent of any reduction.

15. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant, together with any jointly liable co-defendants, to make full restitution to victims in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing.

16. Restitution shall be due immediately and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

17. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

18. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), and Title 31, United States Code, Sections 3711, 3716, and 3728, notwithstanding any payment schedule set by the Court.

19. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the second superseding indictment, as well as the superseding indictment and the forfeiture allegation as to defendant.

### **Acknowledgments and Waivers Regarding Plea of Guilty**

#### **Nature of Agreement**

20. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 16CR54-1.

21. This Agreement concerns criminal liability only. Except as expressly set forth in this 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 Agreement are limited to the United States

Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

### **Waiver of Rights**

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

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. 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.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorneys would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him

unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the superseding indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. 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 attorneys would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. 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 in his own behalf.



b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

23. Defendant understands that, by pleading guilty, he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorneys have explained those rights to him, and the consequences of his waiver of those rights.

**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 Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

25. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the 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 Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 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. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

#### **Other Terms**

27. Defendant agrees to cooperate with the United States Attorney's Office in collecting any ordered fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

28. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States Attorney's Office, or an appropriate federal or state agency (including but not limited to the Internal Revenue Service), for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant. Nothing in this paragraph or the preceding paragraph precludes defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

29. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

### **Conclusion**

30. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

31. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

32. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

33. Defendant and his attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

34. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorneys. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

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MORRIS PASQUAL  
Acting United States Attorney

\_\_\_\_\_  
MARK STEVEN DIAMOND  
Defendant

\_\_\_\_\_  
BRIAN P. NETOLS  
Special Assistant U.S. Attorney

\_\_\_\_\_  
JEFFREY B. STEINBACK  
Attorney for Defendant

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TIMOTHY R. ROELLIG  
Attorney for the Defendant