



**Charge to Which Defendant Is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the information, which charges defendant with conspiracy, in violation of Title 18, United States Code, Section 371.

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

a. Generally, defendant admits that he knowingly conspired with Tony Hardy to violate Title 18, United States Code, Sections 1028(a)(5) and 1028(b)(1)(C), by the knowing possession of a document-making implement that was designed and suited for making identification documents, with the intent that such implement be used in the production of a false identification document which would be used, and that the possession of the document-making implement was in or affected interstate commerce. To effect the object of the conspiracy, the defendant committed the acts stated below.

b. Specifically, on and before June 15, 2010, Tony Hardy (“Hardy”), and the defendant possessed an Easy Idea minilam 450-T (the “device”), which was a laminating device that was designed and suited for making identification documents. Hardy and the defendant had used, and intended to use this device for the purpose of creating false identification documents. They intended to use the identification documents for the purchase

and return of merchandise sold by a large retail business that does business in interstate commerce and has store locations in most states.

c. Further, on June 15, 2010, Hardy and the defendant traveled from Milwaukee, Wisconsin, to Rockford, Illinois. They had previously traveled from Rockford to Milwaukee for the purpose of using counterfeit checks and counterfeit identifications to purchase merchandise at a large retail chain business. When the defendant and Hardy returned to Rockford, their purpose was to fraudulently return the merchandise to stores operated by the same retail chain business in the Rockford area. During the travel, they also possessed the device. They intended to use the device for the purpose of creating false identification documents that would be used in their scheme to fraudulently obtain money and property from retail stores. During the travel to Rockford, Tony Hardy possessed a false identification document, specifically, a fictitious Massachusetts driver's license.

d. On June 15, 2010, at a Rockford store of the large retail business, the defendant attempted to obtain a cash refund for merchandise that had been fraudulently obtained from a Wisconsin store location of the same retail business.

7. The foregoing facts are set forth solely to assist the Court in determining whether a factual basis exists for defendant's plea of guilty, and are not intended to be a complete or comprehensive statement of all the facts within defendant's personal knowledge regarding the charged crime and related conduct.

### Maximum Statutory Penalties

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

a. A maximum sentence of 5 years' imprisonment. This offense also carries a maximum fine of \$250,000, 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 three 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. In accord with 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

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. 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 November 2011 Guidelines Manual.

**b. Offense Level Calculations.**

i. The base offense level is 6, pursuant to Guideline § 2B1.1(a)(2).

ii. The offense level must be increased by 2 levels to 8, pursuant to Guideline § 2B1.1(b)(1)(B), because the loss was more than \$5,000.

iii. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

iv. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **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 and stipulated below, defendant's criminal history points equal 13 and defendant's criminal history category is VI:

i. On or about June 7, 2010, defendant was convicted of misdemeanor criminal trespass in the 17th Judicial Circuit Court of Winnebago County, Illinois, and sentenced to fines and costs, case 2010-CM-0002175. Pursuant to Guideline § 4A1.2(c)(1), this conviction results in no criminal history points.

ii. On or about April 19, 2010, defendant was convicted of felony retail theft and misdemeanor possession of a look-alike substance in the 17th Judicial Circuit Court of Winnebago County, Illinois, and sentenced to 100 hours community service, 30 months probation, and 180 day suspended term of imprisonment, fines, and costs, in case nos. 2010-CF-0000967 and 2010-CM-0001432. Pursuant to Guideline § 4A1.1(c) this conviction results in 1 criminal history point.

iii. The defendant committed the offense in this case while he was on probation for the offense committed in sub-paragraph ii above. Pursuant to Guideline § 4A1.1(d) this results in 2 criminal history points.

iv. On or about March 12, 2010, defendant was convicted of misdemeanor retail theft and misdemeanor battery in the 17th Judicial Circuit Court of Winnebago County, Illinois, and sentenced to 180 days in prison, with 90 days conditional

suspension, 24 months conditional discharge, and fines and costs. Pursuant to Guideline § 4A1.1(b) this conviction results in 2 criminal history points.

v. On or about February 9, 2007, defendant was convicted of felony burglary in the 15th Judicial Circuit Court of Stephenson County, Illinois and sentenced to five years imprisonment in the Illinois Department of Corrections. Pursuant to Guideline § 4A1.1(a) this conviction results in 3 criminal history points.

vi. On or about April 22, 2005 defendant was convicted of felony escape in Richmond County Superior Court of Georgia, and sentenced to one year in prison and four years probation. Pursuant to Guideline § 4A1.1(b) this conviction results in 2 criminal history points.

vii. On or about April 19, 1999, defendant was convicted of: 1) felony manufacturing, distributing, or selling drugs in Cobb County Superior Court of Georgia, and sentenced to five years in prison, and 2) a misdemeanor of giving a false name, address, or birth date to a law enforcement officer in Cobb County Court of Georgia, and sentenced to one year imprisonment. Pursuant to Guideline § 4A1.1(a) this conviction results in 3 criminal history points.

viii. On or about December 22, 1997, defendant was convicted of misdemeanor obstruction of a law enforcement officer and/or giving a false name, address or birthday to a law enforcement officer, in Cobb County State Court of Georgia, and sentenced to 167 days imprisonment. Pursuant to Guideline § 4A1.2(e)(2), this conviction results in no criminal history points.

ix. On or about September 12, 1996, defendant was convicted of felony possession of a weapon by an inmate in Troup County Superior Court of Georgia and sentenced to one year imprisonment. Pursuant to Guideline § 4A1.2(e)(3), this conviction results in no criminal history points.

x. On or about July 6, 1993, defendant was convicted of felony possession, control, or purchase of a controlled substance in Cobb County Superior Court of Georgia, and sentenced to five years imprisonment and fifteen years probation. Pursuant to Guideline § 4A1.2(e)(3), this conviction results in no criminal history points.

xi. On or about September 18, 1992, defendant was convicted of felony obstruction and making threats, also a felony, in Cobb County Superior Court of Georgia, and was sentenced to 21 days imprisonment. Pursuant to Guideline § 4A1.2(e)(3), this conviction results in no criminal history points.

xii. On or about June 14, 1989, defendant pled nolo contendere to misdemeanor battery in Cobb County State Court of Georgia, and sentenced to 60 days imprisonment. Pursuant to Guideline § 4A1.2(e)(3), this conviction results in no criminal history points.

xiii. On or about January 6, 1989, defendant was convicted of felony burglary in Cobb County Superior Court of Georgia, and sentenced to three years imprisonment. Pursuant to Guideline § 4A1.2(e)(3), this conviction results in no criminal history points.

xiv. On or about July 30, 1987, defendant was convicted of felony burglary in a superior court of Georgia, and sentenced to one year imprisonment and four years probation. Pursuant to Guideline § 4A1.2(e)(3), this conviction results in no criminal history points.

xv. On or about July 30, 1987, defendant was convicted of misdemeanor trespass in a state court in Georgia, and sentenced to 30 days imprisonment, eleven months probation, and a \$400 fine. Pursuant to Guideline § 4A1.2(e)(3), this conviction results in no criminal history points.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 6, which, when combined with the anticipated criminal history category of VI, results in an anticipated advisory Sentencing Guidelines range of 12 to 18 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline 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 Guideline 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.

f. 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.

### **Cooperation**

11. Defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate by a representative of the United States Attorney's Office for the Northern District of Illinois. This cooperation shall include providing complete and truthful information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil, or administrative proceeding. Defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation.

### **Agreements Relating to Sentencing**

12. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation. If the government determines that defendant has continued to provide full and truthful cooperation as required by this Agreement, then the

government shall move the Court, pursuant to Guideline § 5K1.1, to depart downward from the low end of the applicable Guideline range, and shall recommend a sentence that includes a term of imprisonment in the custody of the Bureau of Prisons of 66 percent of the low end of the applicable Guideline range. Defendant shall be free to recommend any sentence. Defendant understands that the decision to depart from the applicable guidelines range rests solely with the Court.

13. If the government does not move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart from the applicable Guideline range, as set forth above, the preceding paragraph of this Agreement will be inoperative, both parties shall be free to recommend any sentence, and the Court shall impose a sentence taking into consideration the factors set forth in 18 U.S.C. § 3553(a) as well as the Sentencing Guidelines without any downward departure for cooperation pursuant to § 5K1.1. Defendant may not withdraw his plea of guilty because the government has failed to make a motion pursuant to Sentencing Guideline § 5K1.1.

14. 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.

15. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant, together with any jointly liable co-defendants, to make full restitution to the 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), notwithstanding any payment schedule set by the Court.

19. After sentence has been imposed on the information to which defendant pleads guilty as agreed herein, the government will move to dismiss the count of the indictment as to defendant in Case No. 11 CR 50083.

### **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 number 11 CR 50083-2.

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. **Right to be charged by indictment.** Defendant understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge 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 attorney 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. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

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, 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 attorney 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.

c. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution, in exchange for the concessions made by the United States in this Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief,

has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

d. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

**Presentence Investigation Report/Post-Sentence Supervision**

23. 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 charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing, including the nature and extent of defendant's cooperation.

24. 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.

25. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation 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 or probation 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**

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

#### **Conclusion**

27. 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.

28. 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.

29. 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.

30. Defendant and his attorney 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.

31. Defendant acknowledges that he has read this 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.

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

\_\_\_\_\_  
GARY S. SHAPIRO  
Acting United States Attorney

\_\_\_\_\_  
MARK GRIFFIN  
Defendant

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MICHAEL D. LOVE  
Assistant U.S. Attorney

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PAUL E. GAZIANO  
Attorney for Defendant