

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

ANTHONY ROTH

No. 14 CR 326

Judge Amy J. St. Eve

PLEA AGREEMENT

1. This Plea Agreement between the Acting United States Attorney for the Northern District of Illinois, JOEL R. LEVIN, and defendant ANTHONY ROTH, and his attorneys, MARK ROTERT and MARIAH MORAN, 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 superseding indictment in this case charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts One through Seven).

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

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 superseding indictment: Count Four, which charges defendant with wire fraud 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 Four of the 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 October 2011, and continuing until at least the summer of 2012, defendant ANTHONY ROTH knowingly participated in a scheme to defraud and to obtain money from Telecommunications Company A and Victim Company 2 by means of materially false and fraudulent pretenses, representations, and promises, and by concealment of material facts. Co-defendant David Godwin devised the scheme and defendant participated in the scheme with co-defendant Godwin in the following ways.

In 2010 co-defendant David Godwin proposed a business arrangement to defendant and other investors that involved having a company, which would later be known as ContinuityX Solutions, enter into an agreement with Telecommunications Company A, a global company headquartered in the United States which provides

telecommunications services throughout the world. Under the arrangement proposed by co-defendant Godwin, Telecommunications Company A would enter an agreement authorizing ContinuityX to act as its marketing and sales agent for its goods and services. According to co-defendant Godwin, if ContinuityX could sign up new customers who satisfied the financial and credit requirements set by Telecommunications Company A, then Telecommunications Company A would pay a commission to ContinuityX. Each commission payment would be a percentage of the referred customer's total contract value for services purchased from Telecommunications Company A. Co-defendant Godwin emphasized that ContinuityX could opt for the commission to be paid up front.

Co-defendant Godwin told defendant that he previously had worked for Telecommunications Company A. Co-defendant Godwin portrayed himself as experienced in the marketing and sales of telecommunications services and having strong relationships at companies that consumed substantial amounts of telecommunications services. According to co-defendant Godwin, although these companies would be the ultimate end-user of the goods and services sold by Telecommunications Company A, they would not be the customers actually referred to Telecommunications Company A by ContinuityX.

Instead, co-defendant Godwin wanted ContinuityX to find smaller companies willing to sign contracts to receive goods and services from Telecommunications Company A and to serve as ostensible "customers" of Telecommunications Company

A. Co-defendant Godwin explained that ContinuityX needed to find these new companies as it would not be eligible to receive commissions for signing up business customers of Telecommunications Company A if it signed up businesses that were existing customers or competitors of Telecommunications Company A. The creditworthiness of these new companies, the ostensible “customers,” would be evaluated by Telecommunications Company A. If the ostensible “customer’s” financial history and available business information was deemed satisfactory, Telecommunications Company A would agree to provide goods and services to the ostensible “customer,” and an upfront commission would be paid to ContinuityX.

Co-defendant Godwin further described that the ostensible “customer” next would assign its rights under the contract with Telecommunications Company A to the other companies where co-defendant Godwin had relationships, and those companies would be the ultimate end-users of the goods and services. In this way, co-defendant Godwin asserted, Telecommunications Company A would be paid for its product by the ultimate end-user; the “customer” that actually signed the contract with Telecommunications Company A would be relieved of liability on the contract; and ContinuityX would receive an upfront commission that would provide liquidity to its operations and enable it to create its own telecommunications business operations.

Based on co-defendant Godwin’s representations and assurances about his business plan, defendant and other investors agreed to go into business with co-

defendant Godwin, and they did so through the entity named ContinuityX. ContinuityX was based in Metamora, Illinois and it conducted business using computer servers located in Chicago, Illinois, including to send and receive emails. Co-defendant Godwin was the chief executive officer at ContinuityX. Defendant held various positions at ContinuityX, including, serving, for a period of time, as the chief financial officer. During the time that defendant was the CFO of ContinuityX it was a public company that made required filings with the Securities and Exchange Commission, which defendant signed as CFO.

In 2011 ContinuityX entered into an agreement with Telecommunications Company A. Under the terms of this agreement, ContinuityX was authorized to locate potential customers for the goods and services of Telecommunications Company A. ContinuityX was responsible for transmitting the required financial data of the potential customer to Telecommunications Company A for credit review. Under the terms of the agreement, Telecommunications Company A only would pay a commission for the referral of new customers.

Co-defendant Godwin understood the credit standards which Telecommunication Company A would apply to potential customers and he discussed them with defendant. Co-defendant Godwin informed defendant that customers referred to Telecommunications Company A would undergo a credit review by Telecommunications Company A's credit team, which often included a review of the customer's financial information to determine whether a customer was creditworthy.

During a conference call in 2011 with a Telecommunications Company A employee, defendant and co-defendant Godwin were informed the credit team looked at a number of factors as part of the credit review, including the customer's revenue and sales in the industry, and profit and loss. Co-defendant Godwin and defendant knew that the credit team could require the customer to pay a security deposit to mitigate any potential credit risk. Co-defendant Godwin and defendant were aware that ContinuityX only would be paid a commission if the customers they referred were able to satisfy Telecommunication Company A's credit review.

Co-defendant Godwin and defendant sought companies to serve as the ostensible customers of Telecommunications Company A. Co-defendant Godwin and defendant assured potential customers that if they signed contracts with Telecommunications Company A, ContinuityX would share with them a portion of the commission paid to ContinuityX on that contract. Co-defendant Godwin and defendant also agreed to provide a written side-agreement to the ostensible customers they recruited, that made clear that the ostensible customer would have no liability or obligation to pay for the goods and services they contracted with Telecommunications Company A to receive. Defendant and co-defendant Godwin did not disclose to Telecommunications Company A the assurances they made to the ostensible customers referred by ContinuityX.

The ostensible customers located by defendant and co-defendant Godwin were typically small companies with few employees and annual revenues below the levels

that would gain approval, absent a security deposit, after a credit review by Telecommunications Company A. Co-defendant Godwin and defendant knew that Telecommunications Company A might decline to sign a contract with the customer (which would mean no commission would be paid to ContinuityX) or it might require the customer to pay a substantial security deposit (which ContinuityX had agreed to pay on behalf of the ostensible customer as part of the side agreement, thereby reducing the gain from any commission to ContinuityX). As a result, at co-defendant Godwin's instruction, defendant created false financial statements for ostensible customers for the purpose of submitting these false financial statements to Telecommunications Company A in order to get contracts approved by the credit team without the need for a security deposit. Defendant and co-defendant Godwin created and submitted false financial information for multiple companies in 2011 and 2012.

In late 2011 and early 2012, defendant recruited Co-Schemer A and Co-Schemer A's company, Customer A, to apply for services with Telecommunications Company A. Defendant, co-defendant Godwin and Co-Schemer A agreed that they would falsely inflate Customer A's financial statements to make Customer A appear larger and more profitable in order to be approved by the Telecommunications Company A credit team without a security deposit. Defendant, co-defendant Godwin and Co-Schemer A also agreed that Co-Schemer A would receive a portion of the commission paid to ContinuityX by Telecommunications Company A. Defendant, co-defendant Godwin, and Co-Schemer A further agreed that if Co-Schemer A located

other ostensible customers for ContinuityX, he would be paid a share of any commission payments paid to ContinuityX by Telecommunications Company A for contracts entered into by the other ostensible customers located by Co-Schemer A.

After recruiting Co-Schemer-A, defendant altered the financial data submitted by Co-Schemer A, inflating certain financial information, including revenue. These alterations made it appear that Customer A was larger and generated more revenue than actually was the case. Defendant made co-defendant Godwin and Co-Schemer A aware of the alterations. After defendant explained the reasons for the altered financials to Co-Schemer A, Co-Schemer A agreed to use the altered financials in the application for services submitted to Telecommunications Company A. Co-defendant Godwin maintained this false financial information in the event it was requested by Telecommunications Company A. Co-Schemer A's company was later approved for services by Telecommunications Company A, and a commission was paid to ContinuityX as a result.

In early 2012, Co-Schemer A referred Customers B and C to defendant and co-defendant Godwin to serve as ostensible customers of Telecommunications Company A. Defendant and co-defendant Godwin agreed that the principals of Customers B and C would receive a portion of the commission paid by Telecommunications Company A to ContinuityX for contracts executed by Customers B and C. Defendant and co-defendant Godwin assured Customers B and C that they would not be responsible to make contractual payments to Telecommunications Company A.

These assurances and agreements were reflected in side agreements with the principals of Customers B and C. Defendant and co-defendant Godwin did not disclose to Telecommunications Company A, the existence of the side agreements.

In order to get Customers B and C approved for a service contract with Telecommunications Company A that did not require a security deposit, defendant created false financial information on behalf of Customers B and C and co-defendant Godwin provided this information to Telecommunications Company A. Defendant and co-defendant Godwin not only wanted to get Customers B and C approved, but also to avoid any requirement that a security deposit be paid because they had agreed that ContinuityX, not the customers, would pay any security deposit.

For instance, prior to May 16, 2012, defendant and co-defendant Godwin caused Customer B to be referred for a contract with Telecommunications Company A. On or about May 16, 2012, defendant and co-defendant Godwin learned that Telecommunications Company A's credit team intended to require that Customer B provide a security deposit as a condition of a contract, based on Customer B's financial information. Defendant and co-defendant Godwin also learned that Telecommunications Company A's credit team would reconsider the need for a security deposit if certain additional and positive financial statements for Customer B were provided to the credit team.

On or about May 18, 2012, at co-defendant Godwin's request, defendant created false and inflated financial statements for Customer B to be provided to

Telecommunications Company A's credit team. At the direction of co-defendant Godwin, defendant prepared the financial statements without the benefit of any factual data about Customer B. On May 18, 2012, while outside of Illinois, defendant emailed the false financial statements to co-defendant Godwin, via a ContinuityX server located in Chicago. These false financials made Customer B falsely appear more profitable and larger than actually was the case. At co-defendant Godwin's request, defendant created significantly inflated financials for Customer B because co-defendant Godwin informed him that the order size for Customer B, submitted to Telecommunications Company A, required the financials to meet certain requirements. Co-defendant Godwin then forwarded this false financial information to Telecommunications Company A. Later, the credit team approved Customer B for a contract without any security deposit.

In addition, on multiple occasions, after a ContinuityX-referred customer entered a contract with Telecommunications Company A, defendant and co-defendant Godwin factored or assigned the right to collect the commission payment from Telecommunications Company A to Victim Company 2. More specifically, Victim Company 2 agreed to advance a percentage of a commission payment owed to ContinuityX immediately, in exchange for the right to collect the commission payment from Telecommunications A at a later time. Under its agreement with ContinuityX, when the commission was paid by Telecommunications Company A,

Victim Company 2 retained the money it previously advanced to ContinuityX as well as a fee, and returned any remainder to ContinuityX.

By way of example, after contracts were entered on behalf of Companies A, B, and C, defendant and co-defendant Godwin caused these commissions owed to ContinuityX to be factored through Victim Company 2, which promptly paid a percentage of each commission payment to ContinuityX. At no time, did defendant or co-defendant Godwin disclose to Victim Company 2 or the SEC that ContinuityX had submitted false financial information to Telecommunications Company A on behalf of referred customers.

Defendant and co-defendant Godwin fraudulently caused ContinuityX to be disbursed approximately \$3 million in commission payments related to Customers A, B and C and others. These commission payments were paid by Telecommunications Company A after it received false financial statements that were prepared by defendant and were submitted by co-defendant Godwin.

By the summer of 2012, defendant realized that co-defendant Godwin's business strategy for ContinuityX was based on false assurances to defendant and the investors in ContinuityX. Co-defendant Godwin was not signing agreements with companies willing and able to serve as the ultimate end-users of the goods and services provided by Telecommunications Company A. Defendant knew that the only revenue generated by ContinuityX was commission payments, which primarily came from Telecommunications Company A. Defendant learned that Telecommunications

Company A's invoices for services were not being paid by ContinuityX, including a company operated by defendant, despite co-defendant Godwin's assurances to defendant and the ostensible customers that they would be paid. And, although co-defendant Godwin told defendant and other investors that he would use ContinuityX revenues to build a network of telecommunications facilities to be operated by ContinuityX, defendant learned that almost none of the equipment needed to build such a network had been installed. In an SEC public filing, it was announced that defendant resigned his CFO position in August 17, 2012.

On or about May 18, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant and co-defendant Godwin for the purpose of executing the scheme, knowingly caused to be transmitted by means of wire communication in interstate commerce certain writings, signs and signals, to Chicago, Illinois, from a location outside Illinois, namely an email from defendant to Godwin providing fraudulent financial information regarding Customer B.

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 crimes 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 20 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 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, and 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.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as set forth 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 2016 Guidelines Manual.

b. **Offense Level Calculations.**

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

ii. A sixteen-level enhancement applies pursuant to Guidelines §2B1.1(b)(1)(I) because the loss was more than \$1,500,000 and less than \$3,500,000.

iii. A two-level enhancement applies pursuant to Guidelines §2B1.1(b)(10)(C) because the offense involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means.

iv. A four-level enhancement applies pursuant to Guidelines §2B1.1(b)(19) because the offense involved a violation of the securities law and at that

time, defendant was an officer, chief financial officer, of a publicly traded company, ContinuityX, (as defined in §2B1.1, application note 1).

v. A two-level enhancement applies pursuant to §3B1.1(b) because defendant was a manager or supervisor of the criminal activity. Defendant reserves the right to contest the application of this enhancement.

vi. A two-level enhancement applies pursuant to §3C1.1 because defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction and the obstructive conduct related to the defendant's offense and of conviction and any relevant conduct.

vii. 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.

viii. 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.

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, it is the government's position that the anticipated offense level is 30, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 97 to 121 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

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.

e. 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 guideline range rests solely with the Court.

13. If the government does not move the Court, pursuant to 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 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 the total amount of restitution owed to victims is approximately \$3,000,000, minus any credit for funds repaid prior to sentencing, and 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 in the amount outstanding at the time of 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 count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the superseding indictment, as well as the indictment, and 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 14 CR 326.

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 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 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 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.

b. **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, if the government makes a motion at sentencing for a downward departure pursuant to Guideline § 5K1.1, 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, if the government makes a motion at sentencing for a downward departure pursuant to Guideline § 5K1.1, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, 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, 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.

23. 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

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, including the nature and extent of defendant's cooperation.

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 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

27. 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.

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 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.

34. 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: _____

JOEL R. LEVIN
Acting United States Attorney

ANTHONY ROTH
Defendant

STEVEN J. DOLLEAR
BRIAN WALLACH
JOHN MITCHELL
Assistant U.S. Attorneys

MARK ROTERT
MARIAH MORAN
Attorneys for Defendant