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11 Attorneys for Plaintiff
12 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,) No. CR 05-587(B)-JFW
16)
16 Plaintiff,) PLEA AGREEMENT FOR DEFENDANT
17) DAVID J. BERSHAD
17 v.)
18 DAVID J. BERSHAD,)
19)
19 Defendant.)
20 _____)

21 1. This constitutes the plea agreement between DAVID J.
22 BERSHAD ("defendant"), on the one hand, and the United States
23 Attorney's Office for the Central District of California, on the
24 other hand (the "USAO"). Except as provided in paragraph 20(d)
25 below, this agreement is limited to the USAO and cannot bind any
26 other federal, state, or local prosecuting, administrative or
27 regulatory authorities.

28 / / /

1 (f) The right, if defendant wished, to testify on
2 defendant's own behalf and present evidence in opposition to the
3 charges, including the right to call witnesses and to subpoena
4 those witnesses to testify.

5 (g) The right not to be compelled to testify, and, if
6 defendant chose not to testify or present evidence, to have that
7 choice not be used against defendant.

8 12. By pleading guilty, defendant gives up any and all
9 rights to pursue any affirmative defenses, Fourth Amendment or
10 Fifth Amendment claims, and other pretrial motions that could be
11 filed on his behalf, including assertion of any defense based on
12 statute of limitations or venue.

13 SENTENCING FACTORS

14 13. Defendant understands that the Court is required to
15 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
16 including the kinds of sentence and sentencing range established
17 under the United States Sentencing Guidelines ("U.S.S.G." or
18 "Sentencing Guidelines") in determining defendant's sentence.
19 Defendant further understands that the Sentencing Guidelines are
20 advisory only, and that after considering the Sentencing
21 Guidelines and the other § 3553(a) factors, the Court may be free
22 to exercise its discretion to impose any reasonable sentence up
23 to the maximum set by statute for the crime of conviction.

24 14. Defendant and the USAO agree and stipulate to the
25 following applicable Sentencing Guidelines factors:

26 Base Offense Level: 14 [U.S.S.G. § 2J1.2(a)]

27
28

1	Specific Offense		
2	Characteristics		
3	Substantial interference with admin. of justice:	+3	[U.S.S.G. § 2J1.2(b)(2)]
4	Obstruction extensive in scope	+2	[U.S.S.G. § 2J1.2(b)(3)]
5			
6	Abuse of position of trust:	+2	[U.S.S.G. § 3B1.3]
7	Acceptance of responsibility:	-3	[U.S.S.G. § 3E1.1]
8			

9 Total offense level: 18

10 The USAO will agree to a downward adjustment for acceptance of
11 responsibility only if the conditions set forth in paragraph
12 20(c) are met. Subject to paragraphs 16 and 20(i), defendant and
13 the USAO agree not to seek, argue, or suggest in any way, either
14 orally or in writing, that any other specific offense
15 characteristics, adjustments or departures, relating to either
16 the applicable Offense Level or the Criminal History Category, be
17 imposed. If, however, after signing this agreement but prior to
18 sentencing, defendant were to commit an act, or the USAO were to
19 discover a previously undiscovered act committed by defendant
20 prior to signing this agreement, which act, in the judgment of
21 the USAO, constituted obstruction of justice within the meaning
22 of U.S.S.G. § 3C1.1, the USAO would be free to seek the
23 enhancement set forth in that section. Defendant and the USAO,
24 pursuant to the factors set forth in 18 U.S.C. § 3553(a)(1),
25 (a)(2), (a)(3), (a)(6), and (a)(7), further reserve the right to
26 argue for a sentence outside the sentencing range established by
27 the Sentencing Guidelines, except that the USAO agrees not to
28 argue for a sentence above the low end of the applicable

1 guideline range.

2 15. There is no agreement as to defendant's criminal
3 history or criminal history category.

4 16. The stipulations in this agreement do not bind either
5 the United States Probation Office or the Court. Both defendant
6 and the USAO are free to:

7 (a) Supplement the facts by supplying relevant
8 information to the United States Probation Office and the Court;

9 (b) Correct any and all factual misstatements relating
10 to the calculation of the sentence; and

11 (c) Argue on appeal and collateral review that the
12 Court's Sentencing Guidelines calculations are not error,
13 although each party agrees to maintain its view that the
14 stipulated calculations in paragraph 14 are correct given the
15 facts of this case.

16 DEFENDANT'S OBLIGATIONS

17 17. Defendant agrees that he will:

18 (a) Plead guilty as set forth in this agreement.

19 (b) Not knowingly and willfully fail to abide by all
20 sentencing stipulations contained in this agreement.

21 (c) Not knowingly and willfully fail to: (i) appear
22 for all court appearances, (ii) surrender as ordered for service
23 of sentence, (iii) obey all conditions of any bond, and (iv) obey
24 any other ongoing court order in this matter.

25 (d) Not commit any crime; however, offenses which
26 would be excluded for sentencing purposes under U.S.S.G.
27 § 4A1.2(c) are not within the scope of this agreement.

28 (e) Not knowingly and willfully fail to be truthful at

1 all times with Pretrial Services, the United States Probation
2 Office, and the Court.

3 (f) Pay the applicable special assessment at or before
4 the time of sentencing.

5 (g) At the time of sentencing, pay the fine imposed by
6 the Court, up to a maximum of \$250,000. In this regard,
7 defendant agrees that consideration of the factors set forth in
8 18 U.S.C. § 3553(a)(1), (a)(2)(A)-(C), and (a)(3), justifies a
9 fine amount of \$250,000.

10 18. Defendant further agrees to cooperate fully with the
11 USAO, the Internal Revenue Service, the Postal Inspection Service
12 and, as directed by the USAO, with any other federal law
13 enforcement agency. As used in this agreement, "cooperation"
14 requires defendant to:

15 (a) Respond truthfully and completely to all questions
16 that may be put to defendant, whether in interviews, before a
17 grand jury, or at any trial or other court proceeding.

18 (b) Attend all interviews, meetings, grand jury
19 sessions, trials or other proceedings at which defendant's
20 presence is requested by the USAO or compelled by subpoena or
21 court order.

22 (c) Produce voluntarily all documents, records, or
23 other tangible evidence relating to matters about which the USAO,
24 or its designee, inquires.

25 (d) Authorize the disclosure and release by any third
26 parties of any and all documents, records, or other tangible
27 evidence relating to his cooperation.

28 19. Defendant further agrees to forfeit to the United

1 States the amount of \$7,750,000 (the "Forfeitable Currency"),
2 which defendant agrees shall be forfeited through administrative,
3 judicial criminal or judicial civil forfeiture (at the sole
4 election of the United States), pursuant to 28 U.S.C. § 2461(c),
5 18 U.S.C. § 981(a)(1)(C) and/or 18 U.S.C. § 981(a)(1)(A).

6 Defendant further agrees:

7 (a) That the Forfeitable Currency constitutes or is
8 derived from net proceeds of the conspiracy to obstruct justice
9 (18 U.S.C. § 1503) and to make material false statement under
10 oath (18 U.S.C. § 1623) in violation of 18 U.S.C. § 371 described
11 in count one of the information;

12 (b) That said conspiracy resulted in net proceeds in
13 excess of \$7,750,000;

14 (c) That at the sole and absolute discretion of the
15 USAO, the USAO may elect to cause to be entered (i) a money
16 judgment of forfeiture in the amount of the Forfeitable Currency
17 and apply the Forfeitable Currency toward satisfaction of the
18 judgment and/or (ii) a preliminary and final orders of forfeiture
19 of the Forfeitable Currency at or before sentencing;

20 (d) That within 30 days from the date of defendant's
21 signature herein defendant shall pay the Forfeitable Currency to
22 the United States by electronic funds transfer. Said transfer of
23 the funds shall be made to the Federal Reserve Bank of New York,
24 33 Liberty Street, New York, New York 10045, pursuant to
25 instructions to be provided by the USAO. The government will
26 hold the funds in the Seized Asset Deposit Funds Account until
27 the funds are applied to satisfy any money judgment and/or are
28 forfeited pursuant to any final order of forfeiture described in

1 paragraph 19(c) above;

2 (e) That defendant has clear and sole title to the
3 Forfeitable Currency he promises to deliver to the USAO;

4 (f) Not to contest the forfeiture of the Forfeitable
5 Currency in any administrative or judicial proceeding;

6 (g) To abandon, relinquish, and waive, and by
7 executing this agreement defendant hereby does abandon,
8 relinquish and waive any and all rights in the Forfeitable
9 Currency in favor of the United States;

10 (h) To waive all constitutional and statutory
11 challenges to forfeiture of the Forfeitable Currency on any
12 grounds, including any statutes of limitations and the Excessive
13 Fines Clause;

14 (i) To take all steps as requested by the USAO that
15 are reasonable to pass to the United States clear title to the
16 Forfeitable Currency, including, without limitation, the
17 execution of a consent decree of forfeiture, the completing of
18 any other legal documents required for the transfer of title to
19 the United States, and causing defendant's spouse to execute a
20 consent to decree of forfeiture, all such documents to be
21 delivered to the United States along with the electronic transfer
22 of funds as described in paragraph 19(d) above;

23 (j) Not to assist any other person in any effort
24 falsely to contest the forfeiture of the Forfeitable Currency;

25 (k) That forfeiture of the Forfeitable Currency shall
26 not be counted toward satisfaction of any special assessment,
27 fine, restitution, or any other penalty the Court may impose, nor
28 shall it be counted toward satisfaction of any taxes, penalties,

1 or interest owed to the Internal Revenue Service or any other
2 taxing authority; and

3 (1) With respect to any forfeiture of the Forfeitable
4 Currency, to waive and relinquish and hereby waive and relinquish
5 the requirements of: (i) Federal Rules of Criminal Procedure 32.2
6 and 43(a) regarding notice of the forfeiture in the charging
7 instrument, announcement of the forfeiture at the sentencing, and
8 incorporation of the forfeiture in the judgment; and (ii) 21
9 U.S.C. § 853(p)(1) regarding due diligence, transfer to third
10 party, placement beyond the jurisdiction of the court,
11 substantial diminution of value and commingling.

12 THE USAO'S OBLIGATIONS

13 20. If defendant complies fully with all defendant's
14 obligations under this agreement, the USAO agrees:

15 (a) To abide by all sentencing stipulations contained
16 in this agreement and to advocate to the Court that the only
17 applicable specific offense characteristics, adjustments, and
18 departures are those set forth in paragraph 14 above and
19 paragraph 20(i) below.

20 (b) At the time of sentencing to move to dismiss the
21 underlying indictment against defendant only.

22 (c) At the time of sentencing, provided that defendant
23 demonstrates an acceptance of responsibility for the offense with
24 which he is charged in the information up to and including the
25 time of sentencing, to recommend a three-level reduction in the
26 applicable Sentencing Guidelines offense level, pursuant to
27 U.S.S.G. § 3E1.1.

28 (d) Not to further prosecute defendant for violations

1 of federal law arising out of: (i) the conduct charged in the
2 first superseding indictment in this case and/or described in
3 Exhibit A hereto; (ii) payments to or for the benefit of
4 stockbrokers and/or non-lawyers for serving as plaintiffs and/or
5 for referring other persons and/or entities to serve as
6 plaintiffs; (iii) requests to courts for reimbursement of fees
7 and costs of a damages expert witness and/or his associated
8 entities based in Princeton, New Jersey (collectively the
9 "Princeton Expert"); (iv) the Princeton Expert's financial
10 relationship with PNC Bank; and (v) election, campaign, or other
11 political contributions. The non-prosecution provisions of this
12 paragraph are binding on the USAO, the United States Attorney's
13 Offices for each of the other 93 judicial districts of the United
14 States ("the other USAOs"), and the United States Department of
15 Justice ("DOJ"). Defendant understands and agrees that the USAO,
16 the other USAOs, and DOJ are free to prosecute defendant for any
17 other unlawful past conduct not specifically exempted by this
18 agreement or any illegal conduct that occurs after the date of
19 this agreement.

20 (e) Not to offer as evidence in its case-in-chief in
21 the above-captioned case or in any other prosecution that may be
22 brought against defendant by the USAO, the other USAOs, or DOJ
23 any statements made by defendant or documents, records, or
24 tangible evidence provided by defendant pursuant to defendant's
25 cooperation provided pursuant to this agreement and pursuant to
26 the proffer letter agreement between defendant and the USAO
27 signed by defendant on June 1, 2007 (the "Letter Agreement").
28 Defendant, however, agrees that the USAO, the other USAOs, and

1 DOJ may use such statements, documents, records, and tangible
2 evidence: (1) to obtain and pursue leads to other evidence, which
3 evidence may be used for any purpose, including prosecution of
4 defendant; (2) to cross-examine defendant should defendant
5 testify, or to rebut any evidence, argument or representations
6 made by defendant or a witness called by defendant in any trial,
7 sentencing hearing, or other court proceeding; and (3) in any
8 prosecution of defendant for false statement, obstruction of
9 justice, or perjury.

10 (f) Not to use any information provided by defendant
11 pursuant to this agreement or the Letter Agreement against
12 defendant at sentencing for the purpose of determining the
13 applicable Sentencing Guideline range, including the
14 appropriateness of an upward departure, and to recommend to the
15 Court that such information not be used in determining the
16 sentence to be imposed. Defendant understands, however, that
17 information provided by defendant pursuant to this agreement or
18 the Letter Agreement will be disclosed to the Probation Office
19 and the Court, and that the Court may use this information for
20 the purposes set forth in U.S.S.G § 1B1.8(b) and for determining
21 the sentence to be imposed.

22 (g) Not to pursue any additional civil or criminal
23 forfeiture claims against defendant.

24 (h) If requested by the defendant or his counsel, to
25 bring to the Court's attention the nature and extent of
26 defendant's cooperation, in connection with his sentencing.

27 (i) If the USAO determines, in its exclusive judgment,
28 that defendant has both complied with his obligations under

1 paragraphs 17, 18, and 19 above and provided substantial
2 assistance to law enforcement in the prosecution or investigation
3 of another ("substantial assistance"), to move the Court pursuant
4 to U.S.S.G. § 5K1.1 to fix an offense level and corresponding
5 guideline range below that otherwise advised by the Sentencing
6 Guidelines, and to recommend a sentence no greater than the low-
7 end of this reduced range.

8 (j) To recommend to the Court that a fine of \$250,000
9 is reasonable and that no other fine amount should be imposed.

10 DEFENDANT'S UNDERSTANDINGS REGARDING SUBSTANTIAL ASSISTANCE

11 21. Defendant understands the following:

12 (a) Any knowingly false or misleading statement by
13 defendant will subject defendant to prosecution for false
14 statement, obstruction of justice, and perjury and will
15 constitute a breach by defendant of this agreement.

16 (b) Nothing in this agreement requires the USAO or any
17 other prosecuting or law enforcement agency to accept any
18 cooperation or assistance that defendant may offer, or to use it
19 in any particular way.

20 (c) Defendant cannot withdraw defendant's guilty plea
21 if the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1
22 for a reduced sentence or if the USAO make such a motion and the
23 Court does not grant it or if the Court grants such a motion by
24 the USAO but elects to sentence above the reduced range.

25 (d) At this time the USAO makes no agreement or
26 representation as to whether any cooperation that defendant has
27 provided or intends to provide constitutes substantial
28 assistance. The decision whether defendant has provided

1 substantial assistance rests solely within the discretion of the
2 USAO.

3 (e) The USAO's determination of whether defendant has
4 provided substantial assistance will not depend in any way on
5 whether the government prevails at any trial or court hearing in
6 which defendant testifies.

7 BREACH OF AGREEMENT

8 22. If defendant, at any time after the execution of this
9 agreement knowingly and willfully violates or fails to perform
10 any of defendant's obligations under this agreement ("a breach"),
11 the USAO may declare this agreement breached. For example, if
12 defendant fails to enter a guilty plea pursuant to paragraph
13 17(a) of this agreement, fails to cooperate pursuant to paragraph
14 18 of this agreement, or knowingly and willfully in an interview,
15 before a grand jury, or at trial, falsely accuses another person
16 or entity of criminal conduct or falsely minimizes his own role,
17 or the role of another, in criminal conduct, or fails to pay the
18 Forfeitable Currency pursuant to paragraph 19 of this agreement,
19 he will have breached this agreement. If the USAO declares the
20 agreement breached at any time between the execution of this
21 agreement and defendant's sentencing on a non-custodial sentence
22 or surrender for service of a custodial sentence, and the Court
23 finds such a breach to have occurred, defendant will not be able
24 to withdraw defendant's guilty plea (if, at the time of the
25 breach, he had previously entered his guilty plea), and the USAO
26 will be relieved of all its obligations under this agreement. If
27 the USAO declares this agreement breached at any time after
28 defendant's sentencing on a non-custodial sentence or surrender

1 for service on a custodial sentence, and the Court finds such a
2 breach to have occurred, the USAO will be relieved of all its
3 then-remaining obligations under this agreement. In addition, if
4 the USAO declares the agreement breached, and the Court finds
5 such a breach to have occurred, the other USAOs and DOJ will no
6 longer be bound by the non-prosecution provisions of paragraph
7 20(d) above.

8 23. Following a knowing and willful breach of this
9 agreement by defendant, should the USAO, the other USAOs, or DOJ
10 elect to pursue any charge that was dismissed or that it would
11 have been obligated to dismiss or that was not filed as a result
12 of this agreement, then:

13 (a) Defendant agrees that any applicable statute of
14 limitations is tolled between the date of defendant's signing of
15 this agreement and the commencement of any such prosecution or
16 action.

17 (b) Defendant gives up all defenses based on the
18 statute of limitations, any claim of pre-indictment delay, or any
19 speedy trial claim with respect to any such prosecution, except
20 to the extent that such defenses existed as of the date of
21 defendant's signing this agreement.

22 (c) Defendant agrees that: (i) any statements made by
23 defendant, under oath, at the guilty plea hearing (if there was
24 such a hearing); (ii) the stipulated factual basis statement in
25 this agreement; and (iii) any evidence derived from such
26 statements, are admissible against defendant in any prosecution
27 of defendant by the USAO, the other USAOs, or DOJ, and defendant
28 shall assert no claim under the United States Constitution, any

1 statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of
2 the Federal Rules of Criminal Procedure, or any other federal
3 rule, that the statements or evidence derived from any statements
4 should be suppressed or are inadmissible.


5 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

6 24. Defendant gives up the right to appeal any sentence
7 imposed by the Court and the manner in which the sentence is
8 determined, provided that (a) the sentence is within the
9 statutory maximum specified above and is constitutional, (b) the
10 Court in determining the applicable guideline range does not
11 depart upward in offense level or criminal history category and
12 determines that the total offense level is 18 or below, and
13 (c) the Court imposes a sentence within or below the range
14 corresponding to the determined total offense level and criminal
15 history category. Defendant also gives up any right to bring a
16 post-conviction collateral attack on the conviction or sentence,
17 except a post-conviction collateral attack based on a claim of
18 ineffective assistance of counsel, a claim of newly discovered
19 evidence, or an explicitly retroactive change in the applicable
20 Sentencing Guidelines, sentencing statutes, or statutes of
21 conviction. Notwithstanding the foregoing, defendant retains any
22 ability defendant has to appeal the amount or terms of any fine,
23 restitution order, and the conditions of supervised release
24 imposed by the Court, with the exception of the following:
25 conditions set forth in General Orders 318 and 01-05 of this
26 Court; and the drug testing conditions mandated by 18 U.S.C. §§
27 3563(a)(5) and 3583(b)(7); and the alcohol and drug use
28 conditions authorized by 18 U.S.C. § 3563(b)(7).

1 defendant, defendant's attorney, and the United States Attorney.


2 AGREED AND ACCEPTED

3 UNITED STATES DEPARTMENT OF JUSTICE:


4 
5 _____
6 GEORGE S. CARDONA
7 United States Attorney

7/9/2007
Date


8 UNITED STATES ATTORNEY'S OFFICE
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA:

10 
11 _____
12 GEORGE S. CARDONA
13 United States Attorney


7/9/2007
Date

14 
15 _____
16 DOUGLAS A. AXEL
17 Assistant United States Attorney
18 Deputy Chief, Major Frauds Section

7/9/07
Date

19 
20 _____
21 RICHARD E. ROBINSON
22 Assistant United States Attorney
23 Major Frauds Section

7/9/07
Date

24 
25 _____
26 ROBERT J. MCGAHAN
27 Assistant United States Attorney
28 Major Frauds Section

7/9/07
Date

23 I, DAVID J. BERSHAD, have read this agreement and carefully
24 discussed every part of it with my attorney. I understand the
25 terms of this agreement, and I voluntarily agree to those terms.
26 My attorney has advised me of my rights, of possible defenses, of
27 the Sentencing Guideline provisions, and of the consequences of

28 ///

1 entering into this agreement. No promises or inducements have
2 been made to me other than those contained in this agreement. No
3 one has threatened or forced me in any way to enter into this
4 agreement. Finally, I am satisfied with the representation of my
5 attorney in this matter.

6
7 DAVID J. BERSHAD
8 Defendant

July 6, 2007
Date

9 I am DAVID J. BERSHAD's attorney. I have carefully
10 discussed every part of this agreement with my client. Further,
11 I have fully advised my client of his rights, of possible
12 defenses, of the sentencing factors set forth in 18 U.S.C.
13 § 3553(c), including the relevant Sentencing Guidelines
14 provisions, and of the consequences of entering into this
15 agreement. To my knowledge, my client's decision to enter into
16 this agreement is an informed and voluntary one.

17
18 By: Sel W. Cassman
19 CRISTINA C. ARGUEDAS, ESQ.
ARGUEDAS CASSMAN & HEADLEY LLP

July 6, 2007
Date

20 Counsel for Defendant
21 DAVID J. BERSHAD
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