

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 Plaintiff,)
 v.)
 JAMES DOUGLAS CASSITY,)
)
 Defendant.)

No. S2-4:09 CR 509 JCH

Filed in plea

**PLEA AGREEMENT, GUIDELINES
RECOMMENDATIONS AND STIPULATIONS**

Come now the parties and hereby agree, as follows:

1. PARTIES:

The parties are the defendant James Douglas Cassity, represented by N. Scott Rosenblum, and the United States of America (hereinafter “United States” or “Government”), represented by the Office of the United States Attorney for the Eastern District of Missouri. This agreement does not, and is not intended to, bind any governmental office or agency other than the United States Attorney for the Eastern District of Missouri.

The Court is neither a party to nor bound by this agreement. However, if the Court accepts the plea agreement as to the sentencing range, then the Court will be bound by said agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).

2. GUILTY PLEA:

Pursuant to Rule 11(c)(1)(A), Federal Rules of Criminal Procedure, in exchange for the defendant’s voluntary plea of guilty to Counts 7, 17, 21, 24, 36, and 48 of the Second Superseding Indictment, the government agrees to move for the dismissal of the remaining counts against the defendant at the time of sentencing. Moreover, the United States agrees that

no further federal prosecution will be brought in this District against the defendant relative to the matters described in the Second Superseding Indictment which began sometime prior to 1992 and continued until on or about April 28, 2010, of which the Government is aware at this time.

In addition, pursuant to Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, the parties agree that the defendant shall be sentenced to a range between probation and 115 months incarceration. If the Court informs the parties prior to sentencing that it will reject this agreement or sentences defendant to a sentence not in conformity with this agreement, then either party may withdraw from the plea agreement and the defendant will have an opportunity to withdraw his guilty plea pursuant to Rule 11(c)(5). The parties further agree that neither party shall request a sentence above or below the sentencing agreement in this paragraph pursuant to any chapter of the Guidelines, Title 18, United States Code, Section 3553, or any other provision or rule of law not addressed herein, but either party may argue for any sentence within the range based upon any factor contained in Title 18, United States Code, Section 3553, or any other reason.

The defendant also agrees to forfeit to the United States any interest he may have in all property subject to forfeiture under the counts of conviction, as further set forth herein.

3. ELEMENTS:

As to Count 7 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1344, and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant and others knowingly executed a scheme to defraud a financial institution or to obtain money, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of material false or fraudulent pretenses, representations, or promises;

- (2) as part of the scheme, the defendant and others made a material misrepresentation of fact;
- (3) the defendant and others acted with the intent to defraud; and
- (4) that the financial institution was then insured by the Federal Deposit Insurance Corporation.

As to Counts 17 and 21 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1343, and admits there is a factual basis for the plea and further fully understands that the elements of the crimes alleged in these counts are:

- (1) the defendant and others voluntarily and intentionally devised a scheme to obtain money and property by means of material false representations or promises;
- (2) as part of the scheme, the defendant and others made a material misrepresentation of fact;
- (3) the defendant and others acted with the intent to defraud; and
- (4) the defendant caused interstate wire facilities to be used in furtherance of the scheme.

As to Count 24 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1341, and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant and others voluntarily and intentionally devised a scheme to obtain money and property by means of material false representations or promises;
- (2) as part of the scheme, the defendant and others made a material misrepresentation of fact;
- (3) the defendant with others acted with the intent to defraud; and
- (4) the defendant caused mails to be used in furtherance of the scheme.

As to Count 36 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Section 1957, and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant and others engaged in a monetary transaction;
- (2) the monetary transaction was in property of a value greater than \$10,000 derived from wire fraud, wire fraud affecting a financial institution, mail fraud, mail fraud affecting a financial institution, or bank fraud;
- (3) the defendant knew that the monetary transaction involved proceeds of a criminal offense;
- (4) the monetary transaction took place within the United States; and
- (5) the monetary transaction affected interstate commerce.

As to Count 48 of the Second Superseding Indictment, the defendant admits to violating Title 18, United States Code, Sections 1033(b)(1) and (b)(2), and admits there is a factual basis for the plea and further fully understands that the elements of the crime alleged in this count are:

- (1) the defendant was engaged in the business of insurance;
- (2) the activities of that business affected interstate commerce;
- (3) the defendant misappropriated money, funds, premiums, or credits from the company engaged in the business of insurance; and
- (4) the misappropriation jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation.

4. FACTS:

The parties agree that the facts in this case are as follows and that the government would prove these facts beyond a reasonable doubt if the case were to go to trial. These facts may be considered as relevant conduct pursuant to Section 1B1.3 of the Federal Sentencing Guidelines:

A. Defendant's Role in the Offenses

On or about sometime in 1979, Defendant James Douglas Cassity acquired an interest in National Prearranged Services, Inc. (“NPS”). On or about sometime in 1980, Defendant James Douglas Cassity transferred ownership of NPS to a trust named RBT Trust, for the benefit of his wife and children. On or about September 28, 1990, Defendant’s wife and children transferred their interests in RBT Trust to a new trust named RBT Trust II. From 1979 to 1982, Defendant served as Director of Operations of NPS. Thereafter, Defendant had no official position with NPS, but he continued to exercise control over NPS and its affiliated companies and received compensation through an agreement with NPS.

Beginning sometime prior to 1992 and continuing until 2008, NPS sold prearranged funeral contracts in multiple states including Arizona, Florida, Illinois, Iowa, Kansas, Kentucky, Missouri, Oklahoma, Ohio, and Tennessee. During that time, affiliated insurance companies, including Lincoln Memorial Life Insurance Company, issued life insurance policies related to those prearranged funeral contracts, with NPS acting as its General Agent. As part of the contracts, the total price for funeral services and merchandise for an individual was agreed upon, and would remain constant regardless of when the funeral services and merchandise would be needed. Customers entering into such prearranged funeral contracts would usually pay a single sum of money up-front to NPS either directly or through a funeral home that was also a party to the contract. NPS represented to individual customers, funeral homes, and state regulators that funds paid by customers under the prearranged funeral contracts would be kept in a secure trust or insurance policy as required under state law.

NPS, however, made use of funds paid by customers in ways that were inconsistent both with its prior and continuing representations and with the state laws and regulations applicable to

such transactions. In some states, such as Illinois, insurance premiums were misappropriated before an insurance policy was issued. In other states, such as Ohio, unauthorized policy loans were among the means by which cash was extracted from insurance policies owned by individual policy holders. Ultimately, NPS operated as a fraudulent Ponzi-like scheme, where customer funds were neither kept safe in bank trusts or insurance policies but instead were utilized for unauthorized purposes and the personal enrichment of NPS's officers and others. In turn, new business became the source of funding for funerals that prior customers had previously paid for in advance. In addition to dissipating the funds paid by individuals that NPS and Lincoln Memorial Life Insurance Company did business with, these events and other activities of the defendants jeopardized the safety and soundness of the FDIC insured banks and the insurance companies owned and controlled by the defendants.

B. NPS Operations in Illinois

In Illinois, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in a life insurance policy. Illinois customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties, the preneed contract would be funded by insurance. The customer was obligated to purchase a life insurance policy from an insurance company licensed to do business in Illinois and to pay the insurance premiums necessary to purchase and maintain the policy. The customer also agreed that NPS would receive the death benefits of the policy and would use those benefits to purchase a funeral for the customer from the designated funeral home provider at the time of need. The insurance application provided to customers by NPS explicitly represented that the customer would retain ownership of the insurance policy. At all

pertinent times, Illinois law required that all insurance premiums received by a licensed insurance entity such as NPS were to be deposited into a premium fund trust account and held in a fiduciary capacity until the premium funds were transferred to an insurance company.

The insurance policy purchased contemporaneous with the execution of the preneed funeral contract was a whole life insurance policy from Lincoln Memorial Life Insurance Company, a Texas domiciled insurance company licensed to do business in Illinois. In addition to marketing the prearranged funeral contract through various funeral homes, NPS was the licensed General Agent of Lincoln Memorial Life Insurance Company. Certain NPS employees and funeral home employees were also licensed insurance agents in Illinois.

In those instances when an insurance policy was paid in full, the premium payment, the face value (also known as the death benefit), and the cost of the funeral were all the same amount. In other words, in order to fund a \$10,000 prearranged funeral, the customer would be required to purchase an insurance policy with a death benefit of \$10,000, and the customer could make a single premium payment of \$10,000 and not have any future premium obligations. Most Illinois customers paid their insurance premium in full with a single payment tendered at the time they applied for the insurance and executed the preneed funeral contract. By the terms of the insurance policy, only the owner of the insurance policy could take policy loans against the insurance policy, and only the owner of the insurance policy could surrender the insurance policy.

In its capacity as the General Agent of Lincoln Memorial Life Insurance Company, NPS received applications and insurance premiums from Illinois funeral home insurance agents. The insurance premium was deposited in NPS's Illinois Premium Fund Trust account. Rather than

keeping premiums deposited into this account in a fiduciary capacity as represented by NPS and as required by state law, premiums were transferred on a daily basis into NPS's general operating account for its general use including transfers to National Heritage Enterprises, an affiliated company that compensated certain persons affiliated with NPS, including Defendant James Douglas Cassity through payments made to RBT Trust II.

Applications for life insurance by Illinois customers that were designated as single-pay were "whited out" by employees of NPS and Lincoln Memorial Life Insurance Company to falsely reflect that the customer had applied for a monthly pay as opposed to a single-pay policy. Policies were then issued by Lincoln Memorial Life Insurance Company as monthly pay policies, even though NPS, as Lincoln Memorial Life Insurance Company's General Agent, had received a single premium payment. The funds necessary to renew these monthly policies came not from the original purchaser's funds, but instead from funds paid by new Illinois customers and funds paid by customers in other states. Often, unauthorized policy loans on policies owned by individuals and trusts were used to make renewal premium payments for policies issued in Illinois.

Upon issuance of an insurance policy, NPS received an insurance commission for the sale of the insurance policy of approximately 15%--19% of the policy amount. In addition, NPS took policy loans against Illinois policies as the policies accumulated a cash surrender value without receiving the authorization of the owners of those policies. By the terms of the insurance policy, the proceeds from the policy payable at death would be reduced by any outstanding policy loans and interest. In many instances, NPS surrendered Illinois policies that had both renewal premium obligations and policy loans taken against them. Many of those surrendered single-pay whole life

insurance policies were replaced with term life insurance with monthly renewable premium obligations. Neither the individual owner of the policy nor the funeral home that was obligated to provide the funeral was aware of this activity.

1. Stipulations Particular to Count 48

Prior to February 2006, Schwarz Funeral Home of Mendota, Illinois entered into an agreement with NPS to sell prearranged funerals for NPS and serve as the funeral home provider under the terms of the Preneed Funeral Contracts it would sell. Catherine Thomas, a funeral director with Schwarz Funeral home, also became a licensed insurance agent for Lincoln Memorial Life Insurance Company and agreed to sell policies issued by Lincoln Memorial Life Insurance Company to fund the NPS Preneed Funeral Contracts entered into by the funeral home and its customers.

On or about February 20, 2006, E.M. entered into a NPS Preneed Funeral Contract sold by Schwarz Funeral Home. The agreed price of the prearranged funeral was \$10,242.48. As required under the prearranged funeral contract and consistent with Illinois law, E.M. purchased a life insurance policy in the amount of \$10,242.48 from Lincoln Memorial Life Insurance Company. The application for life insurance was designated as single-pay, and E.M. paid a premium of \$10,242.48 with her insurance application, submitting payment in full as to any premiums owed on the policy to be issued by Lincoln Memorial Life Insurance Company. The application designated NPS as the named beneficiary. The application also stated that E.M. intended to retain ownership of her policy. Catherine Thomas signed the application as the insurance agent for Lincoln Memorial Life Insurance Company and forwarded the application

and the insurance premium to NPS as the licensed General Agent of Lincoln Memorial Life Insurance Company.

NPS received E.M.'s premium payment and deposited E.M.'s check for \$10,242.48 in its Illinois Premium Fund Trust Account. Premiums deposited into the Illinois Premium Fund Trust account that day were swept into the general operating account of NPS. NPS then mailed E.M.'s insurance application to Lincoln Memorial Life Insurance Company. Upon receiving Illinois applications for single-pay life insurance policies, including E.M.'s application, Lincoln Memorial Life Insurance Company employees were instructed to "white-out" the insurance application such that the single-pay designation was changed to monthly pay, and the amount paid with the application was altered to reflect a monthly premium amount. E.M.'s single-pay application was changed to a monthly pay period of 120 months, and the amount paid with the application was changed from \$10,242.48 to \$192.56 with the first renewal premium payment due on March 20, 2006. This alteration to the application was done without the knowledge or approval of E.M. or Schwarz Funeral Home. Neither E.M. nor Schwarz Funeral Home was informed that, despite E.M.'s payment of her insurance premium in full, renewal premiums were now owed on the insurance policy in order to keep the policy current and in effect.

On or before receipt of E.M.'s first month's premium payment from NPS, Lincoln Memorial Life Insurance Company issued a single-pay whole life insurance policy. The data page from the issued policy falsely reflected that NPS, not E.M., was the owner of the insurance policy. The data page also reflected the amount of insurance as \$10,242.48 but with an annual premium obligation totaling \$2,310.70. Lincoln Memorial Life Insurance Company premium records reflect that the cash with the application, or "cwa," received by Lincoln Memorial Life

Insurance Company on or about February 20, 2006 was \$192.56. Lincoln Memorial Life Insurance Company records reflect that a commission payment in the amount of \$1,946.07 was sent on or about March 20, 2006 to its General Agent, NPS. On or about March 13, 2006, a “Paid in Full” Certificate was mailed to both E.M. and Schwarz Funeral home certifying that E.M. had completed payment in full to NPS.

On or about September 29, 2006, NPS took a policy loan against E.M.’s whole life insurance policy in the amount of \$103.07—an amount that reflected the total cash surrender value of the policy as of the date. The loan proceeds from E.M.’s policy were paid to NPS with policy loans taken against other policies on or about September 29, 2006 resulting in a total payment of approximately \$5,670,184.78 from Lincoln Memorial Life Insurance Company to NPS and the Chapter 436 trusts established by NPS.

Lincoln Memorial Life Insurance Company’s policy file for E.M. included a Policy Owner Service Request Form reflecting that the policy owner requested a policy loan in the amount of \$103.07 and stating “in consideration of the advance by Lincoln Memorial Life Insurance Company of this requested loan all rights, title and interest in this policy are hereby assigned to said company as sole security for the repayment of the loan with interest subject to the provisions of the policy which were incorporated and made a part hereof.” One of these policy terms provided that the proceeds payable at the death of the insured would be reduced by any policy loan and interest. The Policy Owner Service Request form was not executed by E.M. Instead it bore only the computer-generated signature of an NPS employee. Neither E.M. nor Schwarz Funeral Home was aware of the policy loan taken against the policy or was a party to

the execution of the Policy Owner Service Request maintained by Lincoln Memorial Life Insurance Company in E.M.'s policy file as its authorization to issue the loan.

On or about January 11, 2007, E.M. died. NPS used funds paid by new customers to pay the policy loan balance after E.M.'s death, thus obligating Lincoln Memorial Life Insurance Company to pay the death benefit in full to NPS as beneficiary of the policy. At the time of E.M.'s death, Lincoln Memorial Life Insurance Company had received only \$2,110.16 in premiums but paid death benefits to NPS in the amount of \$10,242.48 in addition to the previously paid commission payment to NPS of \$1,946.07.

Defendant James Douglas Cassity and others, being engaged in the business of insurance, misappropriated insurance premiums paid by customers to Lincoln Memorial Life Insurance Company through its General Agent, NPS, such as the single-pay premium paid by E.M. in the amount of \$10,242.48.

NPS's misappropriation of single-pay premium payments made by Illinois consumers applying for insurance policies from Lincoln Memorial Insurance Company jeopardized the safety and soundness of Lincoln Memorial Life Insurance Company and was a significant cause of Lincoln Memorial Life Insurance Company being placed in conservation and rehabilitation by the District Court of Travis, Texas, on or about May 14, 2008.

C. NPS Operations in Ohio

In Ohio, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in a life insurance policy. Ohio customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties, the preneed contract would be funded by insurance, and the customer

was obligated to purchase a life insurance policy from an insurance company licensed to do business in Ohio and to pay the insurance premiums necessary to purchase and maintain the policy. The customer also agreed that NPS would receive the death benefits of the policy and would use those benefits to purchase a funeral for the customer from the designated funeral home provider at the time of need. The insurance application provided to customers by NPS explicitly represented, however, that the customer would retain ownership of the insurance policy.

The insurance policy purchased contemporaneous with the execution of the preneed funeral contract was a whole life insurance policy from Lincoln Memorial Life Insurance Company, a Texas domiciled insurance company licensed to do business in Ohio. In addition to marketing the prearranged funeral contract through various funeral homes, NPS was the licensed General Agent of Lincoln Memorial Life Insurance Company. Certain NPS employees and funeral home employees were also licensed insurance agents in Ohio.

In those instances when an insurance policy was paid in full, the premium payment, the face value (also known as the death benefit), and the cost of the funeral were all the same amount. In other words, in order to fund a \$10,000 prearranged funeral, the customer would be required to purchase an insurance policy with a death benefit of \$10,000, and the customer could make a single premium payment of \$10,000 and not have any future premium obligations. In those instances when an insurance policy was paid in full, the preneed funeral contract was considered paid in full as well. Most Ohio customers paid their insurance premium in full with a single payment tendered at the time they applied for the insurance and executed the preneed funeral contract. By the terms of the insurance policy, only the owner of the insurance policy

could take policy loans against the insurance policy, and only the owner of the insurance policy could surrender the insurance policy.

In its capacity as the General Agent of Lincoln Memorial Life Insurance Company, NPS received applications and insurance premiums from Ohio funeral home insurance agents and forwarded the application and insurance premium to Lincoln Memorial Life Insurance Company. Typically, if the funeral home was designated as a beneficiary of the policy, NPS crossed out that designation before submitting the application to Lincoln Memorial Life Insurance Company. In Ohio, NPS sent the entire insurance premium paid by the customer to Lincoln Memorial Life Insurance Company.

Upon issuance of the insurance policy, NPS received an insurance commission for the sale of the insurance policy of approximately 15%–19% of the policy amount. In addition, often within the first 100 days after a policy's issuance, NPS took a policy loan against the policy. The amount of the policy loan was generally in excess of 90% of the cash surrender value of the insurance policy. By the terms of the insurance policy, the proceeds from the policy payable at death would be reduced by any outstanding policy loans and interest. In many instances, NPS surrendered the policies it had taken loans against. In many instances, those surrendered single-pay whole life insurance policies were replaced with term life insurance with monthly renewable premium obligations that would have to be paid from sources other than the premium paid initially by the customer. If inquiries were made by customers, funeral homes, or even NPS Account Executives regarding the status of the insurance policy, including inquiries regarding the cash surrender value or requests for the policies themselves, persons affiliated with NPS

provided incomplete, misleading, and false information regarding the policies in order to conceal this activity.

1. Stipulations Particular to Count 24

Prior to March 2006, Gluvna Shimo Hrmoda Funeral Chapel of Lorain, Ohio entered into an agreement with NPS to sell prearranged funerals for NPS and serve as the funeral home provider under the terms of the Preneed Funeral Contracts it would sell. James M. Hrmoda also became a licensed insurance agent for Lincoln Memorial Life Insurance Company and agreed to sell policies issued by Lincoln Memorial Life Insurance Company to fund the NPS Preneed Funeral Contracts entered into by the funeral home and its customers.

On or about March 10, 2006, R.L. entered into an NPS Preneed Funeral Contract sold by Gluvna Shimo Hrmoda Funeral Chapel. The agreed price of the prearranged funeral was \$6,802.81. As required under the prearranged funeral contract and consistent with Ohio law, R.L. purchased a life insurance policy in the amount of \$6,802.81 from Lincoln Memorial Life Insurance Company. The application for life insurance was designated as single-pay and R.L. paid a premium of \$6,802.81 with his insurance application, submitting payment in full as to any premiums owed on the policy to be issued by Lincoln Memorial Life Insurance Company. The application designated NPS and Gluvna Shimo Hrmoda Funeral Chapel as the named beneficiaries. The application stated R.L. intended to retain ownership of his policy. James Hrmoda signed the application as the insurance agent for Lincoln Memorial Life Insurance Company and forwarded the application and the insurance premium to NPS as the licensed General Agent of Lincoln Memorial Life Insurance Company.

NPS received R.L.'s premium payment and forwarded the same amount to Lincoln Memorial Life Insurance Company. Prior to forwarding R.L.'s application for life insurance, NPS crossed out Gluvna Shimo Hrmoda Funeral Chapel as a designated beneficiary, leaving NPS as the only named beneficiary. This alteration to the application was performed without the knowledge or approval of R.L. or Gluvna Shimo Hrmoda Funeral Chapel.

Upon receipt of R.L.'s premium payment from NPS, Lincoln Memorial Life Insurance Company issued a single-pay whole life insurance policy. The data page from the issued policy reflected that R.L. was both the insured and the owner of the insurance policy. The data page also reflected the amount of insurance as \$6,802.81 and a single premium amount of \$6,802.81. Lincoln Memorial Life Insurance Company premium records reflect that the cash with the application, or "cwa," received by Lincoln Memorial Life Insurance Company on or about March 20, 2006 was \$6,802.81. Lincoln Memorial Life Insurance Company commission records reflect that a commission payment in the amount of \$1,292.53 was sent on or about March 20, 2006 to its General Agent, NPS. On or about April 10, 2006, "Paid in Full" Certificates were placed in an authorized depository for mail matter in Clayton, Missouri and delivered by the United States Postal Service according to the directions thereon, to both R.L. and Gluvna Shimo Hrmoda Funeral Chapel, certifying that R.L. had completed payment in full to NPS.

Persons affiliated with NPS, including Defendant James Douglas Cassity, knew that the "Paid in Full" Certificates issued and mailed by NPS customers and funeral homes, such as those sent to R.L. and Gluvna Shimo Hrmoda Funeral Chapel on or about April 10, 2006, were intended to lead customers and funeral homes to believe that the funds paid by customers would be kept in insurance as required by state law and as represented by NPS, and to ensure that the

customer and funeral home would remain unaware of NPS's practice of taking unauthorized loans against insurance policies sold in Ohio, and elsewhere.

2. Stipulations Particular to Count 17

On or about September 29, 2006 through October 6, 2006 unauthorized policy loans on approximately 29,914 whole life insurance policies were taken against policies owned by individuals in such states as Ohio, Kentucky, Arizona, Oklahoma, Tennessee, Illinois and Kansas as well as policies owned by a Chapter 436 Missouri trust, with said loans against policies owned by individuals resulting in wires of loan proceeds directly to NPS including a wire transfer of funds in the amount of \$1,531,668.01 from an account of Lincoln Memorial Life Insurance Co. at Chase Bank of Texas, N.A., Austin, Texas, to an account of National Prearranged Services, Inc. at Jefferson Bank & Trust, St. Louis, Missouri. The unauthorized loans diminished the value of life insurance policies owned by individuals who purchased said policies in order to fund prearranged funeral contracts. The above loans were taken without the owners' knowledge and consent and served only to advance the Ponzi-like activity of NPS and pay debts owed by NPS and its affiliated companies. Many of the loans on these policies were never repaid but were extinguished by the unauthorized surrender of the whole life policies and the unauthorized replacement of those whole life policies with term life insurance. The practice of taking such unauthorized policy loans on individually owned policies was known to, and directed by, the Defendant James Douglas Cassity, his co-defendants and others and was part of a scheme and artifice to defraud and to obtain monies and property by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, Defendant James Douglas Cassity caused to be transmitted by means of wire

communication in interstate commerce, certain signs, signals and sounds, that is the wire of transfer of funds described above in the amount of \$1,531,668.01.

3. Stipulations Particular to Count 21

Beginning on or before June of 2006, Ohio policies were included among those policies subjected to unauthorized loans as part of NPS's practice of obtaining millions of dollars in loan proceeds, typically on a quarterly basis, from the cash value of hundreds of individual policies owned by individuals and Chapter 436 trusts. Specifically, on or about June 28, 2006, millions of dollars in policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about September 29, 2006, millions of dollars in policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about December 1, 2006 through January 23, 2007, millions of dollars of policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about May 9, 2007, millions of dollars of policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri. On or about May 30, 2007 through June 7, 2007, millions of dollars of policy loans were taken against whole life insurance policies owned by individual customers in states such as Ohio as well as policies owned by Chapter 436 trusts established by NPS in the state of Missouri.

The proceeds from these loans were used to pay renewal insurance premiums (owed by virtue of the Ponzi-like operations of NPS and Lincoln Memorial Life Insurance Company) on both whole life policies and replacement term life policies for states such as Illinois, Ohio, and Missouri. In addition, the loan proceeds were also used to pay NPS's share of operating costs associated with the joint business operation of NPS, Lincoln Memorial Life Insurance Company, and Memorial Service Life Insurance Company. In addition, the loan proceeds were also used to make payments on a Forever Enterprises, Inc. note payable to Memorial Service Life Insurance Company reflecting unpaid debts attributable to the business operations of Forever Enterprises, Inc. and its affiliated companies.

On or about June 20, 2007, the Ohio Department of Insurance submitted an official written inquiry to Lincoln Memorial Life Insurance Company requesting a list of all 2006 and 2007 Ohio life policies sold by Lincoln Memorial Life Insurance Company that had loans against them. At the time it received the regulatory inquiry, Lincoln Memorial Life Insurance Company could not have truthfully responded to this request without disclosing the existence of unauthorized policy loans taken by NPS against policies for Ohio customers. Instead of Lincoln Memorial Life Insurance Company truthfully responding to the regulatory inquiry, NPS directed Lincoln Memorial Life Insurance Company to remove all loans on Ohio policies by transferring the loan repayment obligation from Ohio policies to whole life insurance policies owned by individuals in other states, including Tennessee and Kansas. At NPS's direction, Lincoln Memorial Life Insurance Company then reported in a letter dated July 9, 2007 and sent that same day via a wire, radio, or television communication in interstate commerce, that is, by email, from NPS's office in Clayton, Missouri to the Ohio Department of Insurance in Columbus, Ohio, that

no Ohio policies had loans taken against them, which report was intended to conceal the fact that there were outstanding loans against Ohio policies totaling more than \$10,000,000 at the time of the regulatory inquiry. The letter was sent with Defendant James Douglas Cassity's approval, knowing that the letter was intended to conceal from regulators Lincoln Memorial Life Insurance Company's and NPS's fraudulent practices in the state of Ohio and thereby avoid any regulatory actions which might interfere with the scheme in Ohio and elsewhere.

Persons affiliated with NPS, including Defendant James Douglas Cassity, voluntarily and intentionally participated in a scheme and artifice to defraud and to obtain money and property by means of material false representations and promises regarding funds that were to be kept safe and secure in insurance policies purchased by individuals in states such as Ohio. As part of that scheme, such persons made material misrepresentations of fact regarding such insurance policies and NPS's practice of taking unauthorized policy loans against those policies. In furtherance of that scheme, Defendant James Douglas Cassity acted with the intent to defraud regulators regarding the existence of policy loans in Ohio by means of the letter dated July 9, 2007 sent to the Ohio Department of Insurance.

D. NPS Operations in Missouri

In Missouri, NPS represented that funds paid by customers pursuant to a prearranged funeral contract would be kept in an FDIC insured bank trust. Missouri customers executed a preneed funeral contract with NPS and the funeral home designated to provide the prearranged funeral. By agreement of the parties and consistent with Missouri law, 80% of the funds paid by a preneed customer would be deposited in a bank trust, with the bank serving as trustee, and all funds deposited would be held in trust according to the terms of the trust agreement and Chapter

436 of the laws of Missouri. Under the applicable law and agreements, NPS could seek disbursements of the deposited trust principal only upon providing proof that the agreed-upon funeral had been provided by the funeral home and that NPS had paid the funeral home for the funeral it provided. Upon providing such proof, the seller would then be entitled to seek reimbursement from the trust principal.

In addition to deposits into trust from individual customers, the preneed funeral trusts established by NPS also received deposits in the form of “rollovers.” “Rollovers” were trust-to-trust transfers by which a funeral home that had deposited customer funds into a Chapter 436 preneed trust entered an agreement with NPS to appoint a successor trustee. The successor trustee would be the bank trustee serving as trustee of the Chapter 436 trust established by NPS. By agreement, the original trustee would be directed to “roll over” funds and assets held in the original trust by depositing those funds and assets with the successor trustee bank, where they were to be held in trust along with deposits from NPS’s other customers. Rollover agreements also specified that the proceeds of the rollover would be invested in insurance within 30 days of the trust receiving the rollover deposit.

NPS represented to the bank trustees that any withdrawals from trust would comply with the trust agreement and Missouri law. Both the trust agreement and Missouri law allowed for investment decisions regarding the trust principal to be made by a registered, independent, and qualified investment advisor designated by the seller who established the trust, provided, however, that (1) title to all investments remain with the trustee and be kept by the trustee, (2) control of the assets would not be divested from the trustee, and (3) the assets would not be

placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in.

From 2000 through 2008, NPS sought and received withdrawals from the preneed trust of funds and assets that were required by its agreements and by the applicable state law to remain in trust. Withdrawals from trust were made under the color of the authority vested with the investment advisor designated by NPS to invest trust funds and assets, Wulf, Bates & Murphy, Inc. Contrary to the representations made to the bank trustee, the investment advisor was neither independent nor directing investments in a manner consistent with Chapter 436. Instead, NPS, through Wulf, Bates & Murphy, Inc., directed the movement of funds from the trust for purposes not authorized by Chapter 436, including investments that did not meet the requirements of Chapter 436 and withdrawals and distributions that were not permitted under the trust agreement or Chapter 436. To the extent that the trust invested funds in whole life insurance policies, those policies were subjected to unauthorized policy loans, unauthorized surrenders, and unauthorized replacements with term life policies. Each of these occurrences had the consequence of diminishing or destroying the value of the insurance policies and thus were not reasonably prudent investments and in fact were not investments at all. As the trust accumulated insurance holdings of negligible value, funds that should have been held in trust were withdrawn and disbursed to NPS and its affiliated companies to the ultimate benefit of NPS and persons affiliated with NPS and the ultimate detriment of those individuals and funeral homes that had funds deposited in trust.

Several FDIC-insured banks were defrauded into believing that Wulf, Bates & Murphy, Inc., having been designated as the investment advisor for the trusts, was qualified to act under

the statute and was comporting its activities with the investment requirements of Chapter 436 of the laws of Missouri. The banks were further defrauded with each trust transfer made pursuant to the direction of co-defendant David R. Wulf, or under the color of the authority of Wulf, Bates & Murphy, Inc. as an independent investment advisor. Persons affiliated with NPS represented to the banks that Wulf, Bates & Murphy, Inc. was independent when they knew it was not, and the misrepresentation was part of the scheme to defraud the banks of the trust property. These representations gained the persons affiliated with NPS access to the trust accounts of the FDIC-insured bank trusts and enabled them to remove assets from the FDIC-insured banks that should have been kept in trust. These misrepresentations resulted in the banks losing title to the insurance policies through unauthorized policy loans, and the trusts permanently being divested of ownership of their whole life insurance policies as a result of mass surrenders. These misrepresentations also resulted in the banks losing non-insurance assets through a series of transfers of funds from the trust to entities engaged in the scheme and controlled by the Defendant James Douglas Cassity and other persons affiliated with NPS.

Throughout the scheme, persons affiliated with NPS concealed from the banks the nature and value of the assets the banks owned and the nature and purpose of withdrawals and disbursements from the trusts. The banks were led to believe that the trusts' principal assets were life insurance policies. Throughout the scheme, persons affiliated with NPS concealed how much actually had been paid into the insurance policies, concealed that policy loans had been taken out against policies the banks owned (and which needed to be repaid in order to prevent the amount of the loan from being deducted from the death benefit), concealed that the banks no longer had title to insurance policies purchased by the trusts, concealed that policies had been surrendered,

concealed that the surrender value of the policies went to payoff policy loans previously dispersed instead of being paid to, and retained by, the owner of the policies, and concealed that the banks owned replacement term insurance policies which (1) had no investment value and (2) had new premium obligations for which there was no source of payment other than new customers of NPS.

The banks were affected by actions of persons affiliated with NPS in that they now face a lawsuit for damages because the value of assets in and held by the banks was dissipated as a result of the scheme to defraud and have had to incur legal fees in defending said lawsuit.¹ This loss to the banks occurred because the assets that should have been kept safe in trust were no longer in trust, and what was in trust (replacement term life policies on which the owner was obligated to pay premiums) had no investment value.

1. Stipulations Particular to Count 7

On or about April 1, 2004 unauthorized policy loans on approximately 33,536 whole life insurance policies were taken against policies owned by a Chapter 436 trust, specifically “Trust IV,” a Missouri preneed trust established by National Prearranged Services, Inc., with said loans resulting in a wire transfer of funds to Trust IV of loan proceeds in the amount of \$3,027,149.00. The unauthorized loans diminished the property held in trust by the FDIC insured bank trustee Allegiant Bank, and served only to advance the Ponzi-like activity of NPS and pay debts owed by NPS and its affiliated companies. In addition, the unauthorized loans were specifically impermissible in that, as a result of the loans, title to those policies was no longer held by the FDIC insured bank trustee but was transferred from trust to Lincoln Memorial Life Insurance

¹ Jo Ann Howard and Assocs., et al., v. J. Douglas Cassity, et al., Case No. 4:09-cv-01252 ERW (E.D. Mo. 2009).

Company in order to secure repayment of said loans. Many of the loans on these policies were never repaid but were extinguished by the unauthorized surrender of the whole life policies and the unauthorized replacement of those whole life policies with term life insurance. The practice of taking such unauthorized policy loans was known to, and directed by, Defendant James Douglas Cassity, his co-defendants, and other persons affiliated with NPS and was part of a scheme and artifice to defraud Allegiant Bank, a financial institution which was insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits assets, securities and other property owned, owned by or under the control of Allegiant Bank by means of materially false and fraudulent pretenses, representations and promises.

2. Stipulations Particular to Count 36

On January 6, 2004, Price Funeral Home of Maryville, Missouri entered into a “rollover” agreement with NPS whereby approximately \$2,419,395.74 (the “Price rollover funds”) was deposited in the Chapter 436 trust established by NPS at Allegiant Bank, a bank whose deposits were insured by the Federal Deposit Insurance Corporation. It had been represented to Price Funeral Home that all deposited rollover proceeds would be held in a trust and invested in insurance policies owned by the trust.

As a result of two wire transfers of funds occurring on January 8, 2004 and January 15, 2004, funds totaling \$4,600,000, which included the Price rollover funds and other rollover funds received in December of 2003 and early January of 2004, were wired out of trust to Lincoln Memorial Services, Inc., which in turn transferred the funds to RBT Trust II, a family trust for which co-defendant Howard A. Wittner served as trustee. RBT Trust II used the Price rollover funds and other fraudulent proceeds in June of 2004 to purchase PLICA.

In or around July 2004, Defendant James Douglas Cassity and co-defendant Brent Douglas Cassity formed Bayside Capital, LLC (“Bayside”), a Missouri limited liability company, in which they each owned a fifty per cent (50%) interest. On July 1, 2004, PLICA, PLICA Management Company, and Bayside entered into an administrative agreement whereby Bayside agreed to handle administrative services for PLICA in exchange for a commission of six per cent (6%) on all direct business written by PLICA excepting reinsurance assumed. On November 10, 2005, PLICA, PLICA Management Company and Bayside agreed to increase the amount of commission payable to Bayside to ten per cent (10%). On April 15, 2008, PLICA, PLICA Management Company, and Bayside agreed to increase the amount of commission payable to Bayside to fourteen per cent (14%). Through this agreement, Bayside became the primary vehicle by which Defendant James Douglas Cassity and co-defendant Brent Douglas Cassity derived income from PLICA.

On July 1, 2008, PLICA Management Company wrote a check to Bayside in the amount of \$401,962.61 for commissions payable to Bayside for the month of June 2008. Bayside deposited this check into its account at First Bank, in St. Louis, Missouri, July 1, 2008. On July 7, 2008, Bayside wrote a check on its account at First Bank in the amount of \$57,423.23. On July 7, 2008, Defendant James Douglas Cassity deposited this check in the amount of \$57,423.23 into his personal account at Southwest Bank in Saint Louis, Missouri. These funds, being derived from the purchase of PLICA, constituted property traceable to the proceeds of the fraudulent scheme described above.

At the time that Defendant James Douglas Cassity engaged in the foregoing monetary transaction, he knew that the funds involved in that transaction constituted the proceeds of

criminal activity, in that they were derived from the misuse of the Price rollover funds to acquire PLICA. The monetary transaction occurred within the United States and affected interstate commerce. Southwest Bank was a financial institution as defined in Title 31, United States Code, Section 5312(a)(2) because it was a bank whose deposits are insured by the Federal Deposit Insurance Corporation, and because it was engaged in, and its activities affected interstate commerce.

5. STATUTORY PENALTIES:

The defendant fully understands that the maximum possible penalty provided by law for the crimes to which the defendant is pleading guilty is:

- as to Count 7, not more than 30 years imprisonment, a fine of not more than \$1,000,000, or both;
- as to Counts 17, 21, and 24, not more than 20 years imprisonment, a fine of not more than \$250,000, or both;
- as to Count 36, not more than 10 years imprisonment, a fine of not more of \$250,000 or twice the amount of the criminally derived property involved in the transaction, whichever is greater, or both; and
- as to Count 48, not more than 15 years imprisonment, a fine of not more than \$250,000, or both.

The Court may also impose a period of supervised release of not more than 5 years on Count 7; and not more than 3 years on each of Counts 17, 21, 24, 36, and 48.

6. U.S. SENTENCING GUIDELINES – 2012 MANUAL:

The defendant understands that this offense is affected by the U.S. Sentencing Guidelines that recommend a sentencing range determined by both the Total Offense Level and the Criminal History Category. The parties agree that the following are the applicable U.S. Sentencing Guidelines Total Offense Level provisions that are supported by the evidence related to the

defendant in this case for each of Counts 7, 17, 21, 24, 36, and 48.

a. Chapter 2 Offense Conduct:

(1) Base Offense Level: The parties agree that the base offense level is 7 as found in Section 2B1.1(a)(1). Pursuant to Application Note 2(C), the base offense level is determined by Count 7 because that count provides for the highest statutory maximum term of imprisonment.²

(2) Specific Offense Characteristics: The parties agree that the following Specific Offense Characteristics apply, except as otherwise indicated:

(a) The Government contends that 30 levels should be added pursuant to Section 2B1.1(b)(1)(P), because the loss attributable to the offenses in which the defendant was involved was more than \$400,000,000.00. The defendant disputes the applicability of this Guideline and reserves the right to challenge said enhancement at sentencing.

(b) The parties agree that 6 levels should be added pursuant to Section 2B1.1(b)(2)(C) because the offenses in which the defendant was involved affected more than 250 victims.

(c) The Government contends that 2 levels should be added pursuant to Section 2B1.1(b)(9)(C) because the offenses in which the defendant was involved resulted in the violation of a prior, specific judicial order not addressed elsewhere in the Guidelines. The defendant disputes the applicability of this Guideline and reserves the right to challenge said enhancement at sentencing.

² Although the base offense level for Count 36 (money laundering) is determined by Section 2S1.1, that count is grouped together with the others pursuant to Section 2S1.1 (Application Note 6) because the other counts constitute the underlying offenses from which the laundered funds were derived. The remaining counts produce a higher total offense level and therefore control pursuant to Section 3D1.3. Count 36 is therefore not considered separately herein.

(d) The parties agree that 2 levels should be added pursuant to Section 2B1.1(b)(10)(C) because the offense involved sophisticated means.

(e) That parties agree that 4 levels should be added pursuant to Section 2B1.1(b)(15)(B)(i) and (iii) because the offense substantially jeopardized the safety and soundness of several financial institutions, including Allegiant Bank, Bremen Bank, Lincoln Memorial Life Insurance Company, and the Professional Liability Insurance Company of America, and because the offense substantially jeopardized the solvency or financial security of 100 or more victims.

b. Chapter 3 Adjustments:

(1) Vulnerable Victim: The parties agree that 4 levels should be added pursuant to Sections 3A1.1(b)(1) and (2) because the defendant knew or should have known that one or more victims of the offense were vulnerable and the offense involved a large number of vulnerable victims.

(2) Aggravating Role: The parties agree that 4 levels should be added pursuant to Section 3B.1.1(a) because the defendant acted as an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive.

(3) Abuse of a Position of Trust: The parties agree that 2 levels should be added pursuant to Section 3B.1.3 because the offense involved the defendant's abusing a position of public or private trust.

(4) Acceptance of Responsibility: The parties agree that 2 levels should be deducted pursuant to Section 3E1.1(a) because the defendant has clearly demonstrated acceptance of responsibility. The parties further agree, and the government so moves, that an additional 1 level

should be deducted pursuant to Section 3E1.1(b)(2) because the defendant timely notified authorities of the intention to enter a plea of guilty, thereby permitting the government and the Court to allocate their resources efficiently.

The parties agree that if the defendant does not abide by all of the agreements made within this document, the defendant's failure to comply is grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1. The parties further agree that the defendant's eligibility for a reduction pursuant to Section 3E1.1 is based upon the information known at the present time and that any actions of the defendant which occur or which become known to the government subsequent to this agreement and are inconsistent with the defendant's acceptance of responsibility including, but not limited to criminal conduct, are grounds for the loss of acceptance of responsibility pursuant to Section 3E1.1.

(5) Grouping: The parties agree that all counts should be grouped together pursuant to Section 3D1.2.

c. Estimated Total Offense Level: The Government contends that the Total Offense Level is 58. The defendant disputes this calculation and reserves the right to challenge said total offense level and the enhancements noted above at sentencing.

d. Criminal History: The determination of the defendant's Criminal History Category shall be left to the Court. Either party may challenge, before and at sentencing, the finding of the Presentence Report as to the defendant's criminal history and the applicable category. The defendant's criminal history is known to the defendant and is substantially available in the Pretrial Services Report.

e. Effect of Parties' Guidelines Analysis: The parties agree that the Court is not bound by the Guidelines analysis agreed to herein. The parties may not have foreseen all applicable Guidelines. The Court may, in its discretion, apply or not apply any Guideline despite the agreement herein and the parties shall not be permitted to withdraw from the plea agreement. But, if the Court accepts the plea agreement in this case, it is bound by the sentencing agreement in paragraph 2 above.

7. WAIVER OF APPEAL AND POST -CONVICTION RIGHTS:

a. Appeal: The defendant has been fully apprised by defense counsel of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742.

(1) Non-Sentencing Issues: The parties waive all rights to appeal all non-jurisdictional, non-sentencing issues, including but not limited to, any issues relating to pretrial motions, discovery, and the guilty plea.

(2) Sentencing Issues: In the event the Court accepts the plea and, in sentencing the defendant follows the sentencing agreement in paragraph 2, then, as part of this agreement, the parties hereby waive all rights to appeal all sentencing issues.

b. Habeas Corpus: The defendant agrees to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.

c. Right to Records: The defendant waives all rights, whether asserted directly or by a representative, to request from any department or agency of the United States any records

pertaining to the investigation or prosecution of this case, including any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552(a).

8. OTHER:

a. Disclosures Required by the United States Probation Office: The defendant agrees to truthfully complete and sign forms as required by the United States Probation Office prior to sentencing and consents to the release of these forms and any supporting documentation by the United States Probation Office to the government.

b. Civil or Administrative Actions not Barred; Effect on Other Governmental Agencies: Nothing contained herein limits the rights and authority of the United States to take any civil, tax, immigration/deportation or other administrative action against the defendant.

c. Supervised Release: Pursuant to any supervised release term, the Court will impose standard conditions upon the defendant and may impose special conditions related to the crime defendant committed. These conditions will be restrictions on the defendant to which the defendant will be required to adhere. Violation of the conditions of supervised release resulting in revocation may require the defendant to serve a term of imprisonment equal to the length of the term of supervised release, but not greater than the term set forth in Title 18, United States Code, Section 3583(e)(3), without credit for the time served after release. The defendant understands that parole has been abolished.

d. Mandatory Special Assessment: Pursuant to Title 18, United States Code, Section 3013, the Court is required to impose a mandatory special assessment of \$600.00, which the defendant agrees to pay at the time of sentencing. Money paid by the defendant toward any

restitution or fine imposed by the Court shall be first used to pay any unpaid mandatory special assessment.

e. Possibility of Detention: The defendant may be subject to immediate detention pursuant to the provisions of Title 18, United States Code, Section 3143.

f. Fines, Restitution, and Costs of Incarceration and Supervision: The Court may impose a fine, restitution (in addition to any penalty authorized by law), costs of incarceration, and costs of supervision. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately. Pursuant to Title 18, United States Code, Section 3663A, an order of restitution is mandatory for all crimes listed in 3663A(c). Regardless of the Count of conviction, the amount of mandatory restitution imposed shall include all amounts allowed by Section 3663A(b) and the amount of loss agreed to by the parties, including all relevant conduct loss. The defendant agrees to provide full restitution to all victims of all charges in the Second Superseding Indictment.

g. Forfeiture: Except as otherwise provided herein, the defendant agrees to forfeit any and all interest he may have in any items seized by law enforcement during the course of their investigation and all items specifically identified in the Second Superseding Indictment (together, the "Subject Property"), including but not limited to approximately \$1,109,062.62 in funds held and frozen in account No. XXXX1581 at Truman Bank; approximately \$620,333.33 in funds supporting a Truman Bank cashier's check no. xxxxxx0679; and approximately \$1,984,384.63 in funds held and frozen in account XXXXX7738 at First National Bank.

In addition, the parties agree that the Subject Property includes all ownership shares in Professional Liability Insurance Corporation of America (PLICA), a New York insurance

company. However, because PLICA is presently in receivership and subject to liquidation proceedings, the government will not seek the criminal forfeiture of PLICA shares or any remaining PLICA assets, and this agreement shall not be construed to affect or preclude any rights or remedies that Defendant or others may have in such shares or assets.

The following property is specifically excluded from the property subject to criminal forfeiture as criminal proceeds and from the definition of "Subject Property" and the government shall not pursue the forfeiture of any such property: real property located at 4201 Gulf Shore Blvd., Naples, FL; real property located at 120 Linden, St. Louis, MO (which the parties believe to be presently subject to a recorded judgment in excess of \$6,000,000); real property located at 6000 Santa Monica Boulevard, Los Angeles, CA and any business located on said property; real property located at 301 Tennessee Valley Road, Mill Valley, CA and any business located on said property; real property at 10301 and 10305 Big Bend Road, St. Louis, MO and any business located on said property; and any jewelry identified as personal property subject to criminal forfeiture in the Second Superseding Indictment.

Subject to the foregoing exceptions, the defendant agrees that the Subject Property constitutes the proceeds of the scheme to defraud alleged in the Second Superseding Indictment. The defendant also consents to the entry of a money judgment against defendant and in favor of the United States in the total amount of the criminal proceeds received by the co-defendants in the course of the scheme. The parties agree that criminal forfeiture proceedings are governed by Federal Rule of Criminal Procedure 32.2 and that a forfeiture order that directs the defendant to forfeit specific property remains preliminary as to third-parties until the ancillary proceeding is concluded under Rule 32.2(c).

The defendant consents to the seizure of the Subject Property and hereby forfeits all of the defendant's interest therein. The defendant agrees that the United States may dispose of the Subject Property in any manner authorized by law. The defendant agrees that forfeiture of the Subject Property shall not be treated as satisfaction of or applied to any fine, cost of imprisonment, special assessment, restitution, money judgment, or any other penalty or assessment the Court may impose on the defendant except where required by law or authorized by the United States or its representative.

The defendant agrees not to file a claim in any forfeiture proceeding or otherwise to contest, in any manner, the forfeiture of the Subject Property, including by a motion under Federal Rule of Criminal Procedure 41(g), and hereby withdraws any such pending claim, contest, objection, or other opposition to the forfeiture of the Subject Property. The defendant further agrees not to assist any other individual in contesting the forfeiture of the Subject Property. The defendant agrees to take all steps necessary to transfer title, ownership, and possession of the Subject Property to the United States, including executing any necessary documents and providing truthful testimony and other evidence to rebut the claims of any party claiming an interest in the Subject Property. The defendant agrees to prevent the disbursement of the Subject Property to the extent it remains within the defendant's direct or indirect possession, custody, or control. This agreement shall not be construed to waive any third-party rights under Rule 32.2 to file a petition asserting an interest in the property to be forfeited.

The defendant hereby knowingly and intelligently waives any rights the defendant may have (a) for a jury or the Court to determine what of defendant's property is subject to forfeiture, (b) for the Court to explain the forfeiture at the defendant's change of plea hearing, and (c) for

the forfeiture to be made part of the oral pronouncement of sentence and included in the judgment. Pursuant to Federal Rule of Criminal Procedure 32.2(b)(4), the defendant consents to the Court's preliminary order of forfeiture becoming final as to him on the date the Court enters its preliminary order of forfeiture.

9. ACKNOWLEDGMENT AND WAIVER OF THE DEFENDANT'S RIGHTS:

In pleading guilty, the defendant acknowledges, fully understands and hereby waives his rights, including but not limited to: the right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress or exclude evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the elements of the offenses against the defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and cross-examine adverse witnesses; the right to testify and present evidence and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph.

The defendant fully understands that the defendant has the right to be represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The defendant's counsel has explained these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.

The defendant is fully satisfied with the representation received from defense counsel. The defendant has reviewed the government's evidence and discussed the government's case and all possible defenses and defense witnesses with defense counsel. Defense counsel has completely and satisfactorily explored all areas which the defendant has requested relative to the government's case and any defenses.

10. VOLUNTARY NATURE OF THE GUILTY PLEA AND PLEA AGREEMENT:

This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any agent of the government, including any Department of Justice attorney, concerning any plea to be entered in this case or the agreements, recommendations or stipulations contained herein. In addition, the defendant states that no person has, directly or indirectly, threatened or coerced the defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

The defendant acknowledges that the defendant has voluntarily entered into both this plea and the agreements, recommendations and stipulations herein. The defendant further acknowledges that this guilty plea is made of the defendant's own free will because the defendant is, in fact, guilty of the offenses specified in sections four and five above.

11. CONSEQUENCES OF POST-PLEA MISCONDUCT:

After pleading guilty and before sentencing, if defendant commits any crime, other than minor traffic offenses, violates any condition of release that results in revocation, violates any term of this guilty plea agreement, intentionally provides misleading, incomplete or untruthful information to the U.S. Probation Office or fails to appear for sentencing, the United States, at its

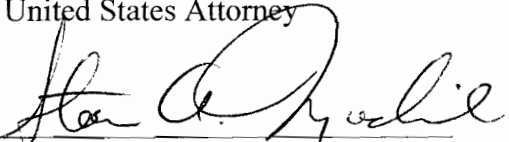
option, may be released from its obligations under this agreement. The Government may also, in its discretion, proceed with this agreement and may advocate for any sentencing position supported by the facts, including but not limited to obstruction of justice and denial of acceptance of responsibility.

12. NO RIGHT TO WITHDRAW GUILTY PLEA:

Pursuant to Rule 11(c) and (d), Federal Rules of Criminal Procedure, the defendant understands that there will be no right to withdraw the plea entered under this agreement, except where the Court rejects the sentence recommendations therein or those portions of the plea agreement which deal with charges the government agrees to dismiss.

Respectfully submitted,

RICHARD G. CALLAHAN
United States Attorney



STEVEN A. MUCHNICK, #27597MO
Assistant United States Attorney

7/3/13
Date

7/3/13
Date



CHARLES S. BIRMINGHAM, #47134MO
Assistant United States Attorney

7/3/13
Date

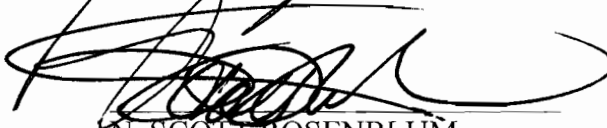

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