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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13
14 UNITED STATES OF AMERICA,) NO. 17-CR-0087 HSG
15 Plaintiff,) PLEA AGREEMENT
16 v.)
17 MARC TERBEEK,)
18 Defendant.)

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20 I, Marc Terbeek, and the United States Attorney's Office for the Northern District of California
21 (hereafter "the government") enter into this written Plea Agreement (the "Agreement") pursuant to Rule
22 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to Counts One and Two of the captioned Information charging me
25 with the following offenses:

- 26 a. Count One: Making An Illegal Payment To A Union Employee, in violation of 29
27 U.S.C. § 186^{9 MS}(b). I agree that the elements of the offense are as follows: (i) I was a
28 person acting in the interest of an employer; (ii) I paid and agreed to pay money to an
_{SB E3}

PLEA AGREEMENT

FILED

FEB 15 2017

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 employee of a labor organization which represented, or sought to represent or would have
2 admitted to membership employees of such employer; (iii) such employees were
3 employed in an industry affecting interstate or foreign commerce; (iv) both the employer
4 and the labor organization were subject to the Labor-Management Relations Act of 1947
5 (Taft-Hartley Act), 29 U.S.C. § 142 and § 152; (v) I acted unlawfully and willfully; and
6 (vi) the money or thing of value in the transaction exceeded \$1,000.

7 I agree that the maximum penalties are as follows:

- 8 a. Maximum prison term 5 years
9 b. Maximum fine \$250,000 or twice the gross
10 gain or gross loss, whichever
is greater
11 c. Maximum supervised release term 3 years
12 d. Restitution
13 e. Mandatory special assessment \$100

- 14 b. Count Two: Willful Violation of Anti-Structuring Regulation, in violation of 12 U.S.C.
15 § 1956. I agree that the elements of the offense are as follows: I willfully, (i) for the
16 purpose of evading the transactions in currency reporting requirements of 31 C.F.R.
17 § 1010.311, (ii) structured transactions with certain financial institutions, (iii) and caused
18 those institutions not to file required Currency Transaction Reports.

19 I agree that the maximum penalties are as follows:

- 20 a. Maximum prison term 1 year
21 b. Maximum fine \$100,000
22 c. Maximum supervised release term 1 year
23 d. Restitution
24 e. Mandatory special assessment \$25

1 2. I agree that I am guilty of the offenses to which I am pleading guilty, and I agree that the
2 following facts are true:

3 a. I am an attorney. In approximately February 2010, I entered into a business
4 relationship with an employee of the United Food and Commercial Workers (UFCW), Daniel Rush.
5 Rush was employed by the UFCW to organize employees of marijuana businesses to be members of the
6 UFCW. I understood that the UFCW could and did represent the employees of these businesses. As part
7 of his job, Rush helped the marijuana business owners to set up their businesses and obtain necessary
8 permitting. He referred those business owners to me. In exchange, he demanded that I provide him
9 with a portion of the money I earned representing these businesses and I did so. I provided him with
10 over \$10,000. I agree that the marijuana business affects interstate commerce and that both the
11 employers and the UFCW were subject to the Labor-Management Relations Act of 1947 (Taft-Hartley
12 Act), 29 U.S.C. § 142 and § 152.

13 b. I also structured bank deposits for the benefit of Rush. One of my clients (Client
14 A) earned money in part from the sale of medical marijuana, which Rush knew. In 2010, Client A
15 loaned Rush \$500,000 in cash. Rush needed the money to pay off a \$420,000 loan encumbering a piece
16 of real property that belonged to his family. Rush promised to pay Client A \$3,000 per month in interest
17 for 5 years then pay back the principal in January 2015. I agreed to put the cash into my accounts and
18 then pay off the note. I did this by making a series of deposits in January and February 2010 of less than
19 \$10,000 at Bay Area Wells Fargo and Bank of America branches, both of which are financial
20 institutions subject to the requirements of 31 CFR § 1010.311. I structured the funds into the banking
21 system in this way in an effort to prevent the banks from filing Currency Transactions Reports. Once I
22 had deposited sufficient funds, I obtained a cashier's check for \$420,000 and paid off the note. Rush
23 took the other \$80,000 for his own use. Until 2015, I paid the monthly \$3,000 fee. In 2015, I assisted
24 Rush in negotiating an agreement with Client A to forgive the original loan.

25 c. Other facts regarding my relationship with Rush are set forth in the declaration I
26 signed in connection with this matter on January 3, 2017, which I understand has been filed with the
27 Court. I incorporate those additional assertions here by reference and accept responsibility for them.
28

1 3. I agree to give up all rights that I would have if I chose to proceed to trial, including the
2 rights to a jury trial with the assistance of an attorney; to confront and cross-examine government
3 witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth
4 Amendment claims; to any further discovery from the government; and to pursue any affirmative
5 defenses and present evidence. I have been advised by my attorneys of a possible statute of limitations
6 defense to Count Two of the Information, and I agree not to raise a statute of limitations defense to this
7 Count.

8 4. I agree to give up my right to appeal my conviction, the judgment, and orders of the
9 Court, as well as any aspect of my sentence, including any orders relating to forfeiture and/or restitution,
10 except that I reserve my right to claim that my counsel was ineffective.

11 5. I agree not to file any collateral attack on my conviction or sentence, including a petition
12 under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, except that I reserve my right to claim that my counsel was
13 ineffective. I also agree not to seek relief under 18 U.S.C. § 3582.

14 6. I agree not to ask the Court to withdraw my guilty pleas at any time after they are
15 entered. I understand that by entering into this Agreement: (a) I agree that the facts set forth in
16 Paragraph 2 of this Agreement shall be admissible against me under Fed. R. Evid. 801(d)(2)(A) in any
17 subsequent proceeding, including at trial, in the event I violate any of the terms of this Agreement, and
18 (b) I expressly waive any and all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 with regard to
19 the facts set forth in Paragraph 2 of this Agreement in such subsequent proceeding. I understand that the
20 government will not preserve any physical evidence obtained in this case.

21 7. I understand that the Court must consult the United States Sentencing Guidelines and
22 take them into account when sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I
23 also agree that the sentencing range will be calculated by the Court and that other than seeking a
24 possible downward departure pursuant to USSG § 5K1.1 and/or 18 U.S.C. § 3553(e), I will not ask for
25 any other adjustment to or reduction in the offense level or for a downward departure from the
26 Guidelines range as determined by the Court. I reserve the right to seek a downward variance based on
27 the factors set forth in 18 U.S.C. § 3553(a). I understand that the government is free to oppose any such
28 request. I understand that regardless of the sentence that the Court imposes on me, I will not be entitled,

1 nor will I ask, to withdraw my guilty pleas.

2 8. I agree that regardless of any other provision of this Agreement, the government may and
3 will provide the Court and the Probation Office with all information relevant to the charged offense and
4 the sentencing decision.

5 9. I agree to pay full restitution for all losses caused by all the schemes or offenses with
6 which I was charged in this case, and I understand that the amount of restitution will not be limited to
7 the loss attributable to the counts to which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I
8 understand that the Court will not consider my economic circumstances in determining the restitution
9 amount. I agree to pay restitution in an amount to be set by the Court at the time of sentencing.

10 Any restitution payments shall be paid through the Office of the Clerk of the District Court by
11 bank or cashier's check or money order made payable to the "Clerk, United States District Court."

12 I understand that the restitution described above creates a lien in favor of the United States on all
13 property and rights to property I may possess upon entry of judgment and continues for 20 years or until
14 the debt is paid in full. I further understand the government will record a notice of the lien in any county
15 where I reside or have property. I further understand that this order of restitution cannot be discharged
16 in bankruptcy and that if I default on the payment of a fine or restitution, the Court may revoke
17 probation or a term of supervised release, modify the terms or conditions of probation or supervised
18 release, resentence me, hold me in contempt of court, order the sale of property, enter or adjust a
19 payment schedule, or take any other action necessary to obtain compliance.

20 Within thirty days of the execution of this Plea Agreement, I agree to complete, under penalty of
21 perjury, a financial statement provided by the U.S. Attorney's Office and to update that statement with
22 material changes within seven days of the change. I understand that I must identify all assets and
23 financial interests valued at more than \$1,000. I further understand that these assets and financial
24 interests include all assets and financial interests in which I have an interest, direct or indirect, whether
25 held in my own name or in the name of another, in any property, real or personal.

26 I agree to release funds and property under my control in order to pay any fine, forfeiture, or
27 restitution. I further agree to notify the Financial Litigation Unit, United States Attorney's Office
28 ("FLU") before transferring any interest in property owned directly or indirectly by me, including any

1 interest held or owned under any other name or entity, including trusts, partnerships, and/or
2 corporations. I also agree to notify the FLU of any interest in property I may obtain, directly or
3 indirectly, including any interest obtained under any other name, or entity, including a trust, partnership,
4 or corporation, after the execution of this Plea Agreement until the fine or restitution is paid in full.

5 I agree that any fine, forfeiture, or restitution imposed by the Court against me will be due
6 immediately and subject to immediate enforcement by the government as authorized by 18 U.S.C. §
7 3613. I further understand that the government may seek immediate collection of the entire fine,
8 forfeiture, or restitution from any assets without regard to any schedule of payments imposed by the
9 Court or established by the Probation Office and that monetary penalties imposed by the Court will be
10 submitted to the Treasury Offset Program so that any federal payment or transfer of returned property I
11 receive may be offset and applied to federal debts.

12 10. I agree to cooperate with the U.S. Attorney's Office before and after I am sentenced. My
13 cooperation will include, but will not be limited to, the following:

- 14 a. I will respond truthfully and completely to any and all questions put to me, whether in
15 interviews, before a grand jury, or at any trial or other proceeding;
- 16 b. I will provide all documents and other material asked for by the government;
- 17 c. I will testify truthfully at any grand jury, court, or other proceeding as requested by the
18 government;
- 19 d. I will surrender any and all assets acquired or obtained directly or indirectly as a result of
20 my illegal conduct;
- 21 c. I will request continuances of my sentencing date, as necessary, until my cooperation is
22 completed.

23 11. I agree that the government's decision whether to file a motion pursuant to U.S.S.G.
24 § 5K1.1, as described in the government promises section below, is based on its sole and exclusive
25 decision of whether I have provided substantial assistance and that decision will be binding on me. I
26 understand that the government's decision whether to file such a motion, or the extent of the departure
27 recommended by any motion, will not depend on whether convictions are obtained in any case. I also
28 understand that the Court will not be bound by any recommendation made by the government.

12. I agree not to commit or attempt to commit any crimes before sentence is imposed or
before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release; not

1 to intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the
2 government; and not to fail to comply with any of the other promises I have made in this Agreement. I
3 agree that if I fail to comply with any promises I have made in this Agreement, then the government will
4 be released from all of its promises in this Agreement, including those set forth in the Government's
5 Promises Section below, but I will not be released from my guilty pleas.

6 13. If I am prosecuted after failing to comply with any promises I made in this Agreement,
7 then (a) I agree that any statements I made to any law enforcement or other government agency or in
8 Court, whether or not made pursuant to the cooperation provisions of this Agreement, may be used in
9 any way; (b) I waive any and all claims under the United States Constitution, Rule 11(f) of the Federal
10 Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal statute or
11 rule, to suppress or restrict the use of my statements, or any leads derived from those statements; and (c)
12 I waive any defense to any prosecution that it is barred by a statute of limitations, if the limitations
13 period has run between the date of this Agreement and the date I am indicted.

14 14. I agree that this Agreement contains all of the promises and agreements between the
15 government and me, and I will not claim otherwise in the future. No modification of this Agreement
16 shall be effective unless it is in writing and signed by all parties.

17 15. I agree that the Agreement binds the U.S. Attorney's Office for the Northern District of
18 California only, and does not bind any other federal, state, or local agency.

19 The Government's Promises

20 16. The government agrees not to file any additional charges against the defendant that could
21 be filed as a result of the investigation that led to the captioned Information.

22 17. The government agrees not to use any statements made by the defendant pursuant to this
23 Agreement against him, unless the defendant fails to comply with any promises in this Agreement.

24 18. If, in its sole and exclusive judgment, the government decides that the defendant has
25 cooperated fully and truthfully, provided substantial assistance to law enforcement authorities within the
26 meaning of U.S.S.G. § 5K1.1, and otherwise complied fully with this Agreement, it will file with the
27 Court a motion under § 5K1.1 and/or 18 U.S.C. § 3553 that explains the nature and extent of the
28 defendant's cooperation and recommends a downward departure.

1 The Defendant's Affirmations

2 19. I agree that my participation in the District Court's Conviction Alternative Program is not
3 appropriate and that I will not request to be considered for and will not participate in that program as a
4 result of my convictions for these offenses.

5 20. I confirm that I have had adequate time to discuss this case, the evidence, and the
6 Agreement with my attorney and that my attorney has provided me with all the legal advice that I
7 requested.

8 21. I confirm that while I considered signing this Agreement, and at the time I signed it, I
9 was not under the influence of any alcohol, drug, or medicine that would impair my ability to understand
10 the Agreement.

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1 22. I confirm that my decision to enter guilty pleas is made knowing the charges that have
2 been brought against me, any possible defense, and the benefits and possible detriments of proceeding to
3 trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or
4 threatened me to enter into this Agreement.


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6 Dated: 2-16-17



MARC TERBEEK
Defendant

BRIAN J. STRETCH
United States Attorney


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8
9
10 Dated: 2/16/17



JOHN H. HEMANN
KATHERINE L. WAWRZYNIAK
Assistant United States Attorneys

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13 23. I have fully explained to my client all the rights that a criminal defendant has and all the
14 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all
15 the rights my client is giving up by pleading guilty, and, based on the information now known to me, my
16 client's decision to plead guilty is knowing and voluntary.

17
18 Dated: 2-16-17



EDWARD SWANSON
AUGUST GUGELMANN
Attorneys for Defendant