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11

UNITED STATES DISTRICT COURT

12

SOUTHERN DISTRICT OF CALIFORNIA

13

UNITED STATES OF AMERICA,

)

Criminal Case No. 05cr2137-LAB

14

Plaintiff,

)

15

v.

)

PLEA AGREEMENT

16

RANDALL HAROLD CUNNINGHAM,

)

17

aka Randy "Duke" Cunningham,

)

18

Defendant.

)

19

20 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
21 AMERICA, through its counsel, Carol C. Lam, United States Attorney,
22 and Sanjay Bhandari, Jason A. Forge, and Philip L.B. Halpern,
23 Assistant United States Attorneys, and defendant, RANDALL HAROLD
24 CUNNINGHAM, with the advice and consent of K. Lee Blalack and Mark
25 Holscher, counsel for defendant, as follows:

26 //

27 //

28 //

Def. Initials

RWC

FILED

NOV 28 2005

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

I

THE PLEA

Defendant agrees to waive Indictment and plead guilty to a two-count Information charging defendant with one count of Conspiracy in violation of Title 18, United States Code, Section 371, and one count of Tax Evasion in violation of Title 26, United States Code, Section 7201.

II

NATURE OF THE OFFENSES

A. ELEMENTS EXPLAINED

Defendant understands that the offenses to which he is pleading guilty have the following elements:

Conspiracy - 18 U.S.C. § 371

1. There was an agreement between two or more persons to commit a crime against the United States;
2. Defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and
3. One of the members of the conspiracy performed an overt act for the purpose of carrying out the conspiracy.

Tax Evasion - 26 U.S.C. § 7201

1. Defendant owed federal income tax for the 2004 calendar year;
2. Defendant knew that federal income tax was owed;
3. Defendant made an affirmative attempt to evade or defeat an income tax; and
4. In attempting to evade or defeat such tax, defendant acted willfully.

Def. Initials *RBC*

1 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

2 Defendant has fully discussed the facts of this case with defense
3 counsel. Defendant has committed each of the elements of the crimes,
4 and admits that there is a factual basis for this guilty plea. The
5 following facts are true and undisputed:

6 DEFINITIONS

7 The "Arlington Condominium" is a condominium located at 1211
8 South Eads Street, Arlington, Virginia that defendant owned from on
9 or about December 3, 2001, until on or about March 8, 2004, .

10 The "Del Mar Home" is a house located at 13832 Mercado Drive, Del
11 Mar, California that defendant owned from on or about January 20,
12 1988, until on or about November 20, 2003. In or about late November
13 2003, defendant sold the Del Mar Home to 1523 New Hampshire Ave., LLC,
14 and purchased a house located at 7094 Via del Charro, Rancho Santa Fe,
15 California (the "Rancho Santa Fe Home").

16 "Top Gun Enterprises, Inc." is a California corporation based in
17 San Diego County, California that defendant owned and operated at all
18 times material to the Information. As of the date of this agreement,
19 Top Gun Enterprises, Inc.'s office address was the Rancho Santa Fe
20 Home.

21 The "Kelly C" is a 65-foot yacht of which defendant was the legal
22 owner at all times material to the Information.

23 "Coconspirator No. 1" is an individual who was the majority owner
24 of a defense contractor at all times material to the Information.

25 "Coconspirator No. 2" is an individual who was the majority owner
26 of a defense contractor at all times material to the Information.

27 The "Buoy Toy" is a 42-foot yacht that Coconspirator No. 2
28 purchased on or about August 30, 2002. From in or about fall 2002,

Def. Initials ELC

1 through in or about summer 2005, the boat (officially renamed the
2 "Duke-Stir" on January 21, 2003) was docked in defendant's slip at the
3 Capital Yacht Club, 1000 Water Street, SW, Washington, D.C.

4 "1523 New Hampshire Ave., LLC" is a Nevada domestic limited
5 liability company of which Coconspirator No. 2 was the managing member
6 at all times material to the Information.

7 "Coconspirator No. 3" is an individual who controlled a financial
8 company located in Rosedale, New York at all times material to the
9 Information.

10 "Coconspirator No. 4" is an individual who was the president of
11 a mortgage company located in Greenvale, New York at all times
12 material to the Information.

13 CONSPIRACY

14 Beginning no later than the year 2000, and continuing through
15 about June 2005, within the Southern District of California and
16 elsewhere, defendant conspired and agreed with Coconspirator No. 1,
17 Coconspirator No. 2, Coconspirator No. 3, Coconspirator No. 4, and
18 others (hereinafter collectively referred as the "Coconspirators") to
19 commit the following offenses against the United States:

20 a. Bribery of a Public Official, that is, defendant and his
21 Coconspirators conspired and agreed that defendant would
22 directly and indirectly corruptly demand, seek, receive,
23 and accept items of value from his Coconspirators, in
24 return for being influenced in the performance of his
25 official acts, in violation of Title 18, United States
26 Code, Section 201(b)(2)(A);

27 b. Honest Services Mail Fraud, that is, defendant and his
28 Coconspirators conspired and agreed to devise a material

Def. Initials BHC

1 scheme to defraud the United States of its right to
2 defendant's honest services, including its right to his
3 conscientious, loyal, faithful, disinterested, unbiased
4 service, to be performed free of deceit, undue influence,
5 conflict of interest, self-enrichment, self-dealing,
6 concealment, bribery, fraud, and corruption, and, in
7 executing said scheme, to cause matters and things to be
8 sent and delivered by the United States Postal Service and
9 private and commercial interstate carriers, in violation of
10 Title 18, United States Code, Sections 1346 and 1341;

11 c. Honest Services Wire Fraud, that is, defendant and his
12 Coconspirators conspired and agreed to devise a material
13 scheme to defraud the United States of its right to
14 defendant's honest services, including its right to his
15 conscientious, loyal, faithful, disinterested, unbiased
16 service, to be performed free of deceit, undue influence,
17 conflict of interest, self-enrichment, self-dealing,
18 concealment, bribery, fraud, and corruption, and, in
19 executing said scheme, to transmit and cause to be
20 transmitted in interstate commerce by means of wire
21 communications, certain writings, signs, signals and
22 sounds, in violation of Title 18, United States Code,
23 Sections 1346 and 1343; and

24 d. Tax Evasion, that is, defendant and his Coconspirators
25 conspired and agreed to willfully evade and defeat the
26 income tax due and owing to the United States of America by
27 defendant for calendar years 2001 through 2005 by
28 concealing and disguising through various means illicit

Def. Initials RHC

1 payments and benefits received by defendant, in violation
2 of Title 26, United States Code, Section 7201.

3 METHODS AND MEANS OF THE CONSPIRACY

4 In furtherance of this conspiracy, defendant and his
5 Coconspirators used the following methods and means, among others:

- 6 a. Defendant demanded, sought, and received at least
7 \$2.4 million in illicit payments and benefits from his
8 Coconspirators in various forms, including cash, checks,
9 meals, travel, lodging, furnishings, antiques, rugs, yacht
10 club fees, boat repairs and improvements, moving expenses,
11 cars, and boats;
- 12 b. Defendant made recommendations and took other official
13 action in order to influence the United States Congress's
14 appropriations of funds to benefit Coconspirator No. 1 and
15 Coconspirator No. 2, which defendant did, in part, because
16 of his receipt of the above-described payments and
17 benefits, and not because using Coconspirators Nos. 1 and
18 2 was in the best interest of the country;
- 19 c. Defendant used his public office and took other official
20 action to pressure and influence United States Department
21 of Defense personnel to award and execute government
22 contracts in a manner that would benefit Coconspirator No.
23 1 and Coconspirator No. 2, which defendant did, in part,
24 because of his receipt of the above-described payments and
25 benefits, and not because using Coconspirators Nos. 1 and
26 2 was in the best interest of the country;
- 27 d. Defendant used his public office and took other official
28 action in a manner that would benefit Coconspirator No. 3,

Def. Initials RUC

1 which defendant did because of his receipt of the above-
2 described payments and benefits;

3 e. Defendant and his Coconspirators attempted to conceal and
4 disguise this conspiracy through various means, including
5 one-sided transactions through which one or more
6 Coconspirators would buy property from defendant at an
7 above-market price, would pay money to defendant for
8 property that defendant continued to own, and would sell to
9 defendant property at a below-market price.

10 f. Defendant and his Coconspirators also attempted to conceal
11 and disguise this conspiracy by directing payments through
12 multi-layered transactions involving corporate entities and
13 bank accounts that defendant and his Coconspirators owned
14 and controlled, including the following payments:

15 i. By having Coconspirator No. 1 pay \$525,000 to a
16 company controlled by Coconspirator No. 3, in order to
17 pay off a mortgage on the defendant's Rancho Santa Fe
18 Home that had been issued by a company owned by
19 Coconspirator No. 4;

20 ii. By having Coconspirator No. 2 pay \$500,000 to
21 defendant, who caused the money to be deposited into
22 the bank account of a company controlled by
23 Coconspirator No. 3, in order to pay off a mortgage on
24 the defendant's Rancho Santa Fe Home that had been
25 issued by a company owned by Coconspirator No. 4;

26 iii. By having Coconspirator No. 3 pay \$200,000 to a
27 company controlled by Coconspirator No. 4, as the down
28

Def. Initials LHC

1 payment for the purchase of the defendant's Arlington
2 condominium; and

3 iv. By having Coconspirator No. 2 pay defendant \$115,100
4 in the form of a check made payable to Top Gun
5 Enterprises, Inc., in order to offset the capital
6 gains taxes owed by the defendant on the sale of his
7 Del Mar home.

8 g. Defendant also attempted to conceal and disguise this
9 conspiracy by intentionally failing to include in his
10 Financial Disclosure Statements to the United States House
11 of Representatives the illicit payments and benefits that
12 he received from his Coconspirators; and

13 h. Defendant also attempted to conceal and disguise this
14 conspiracy by intentionally failing to include in his
15 United States Individual Income Tax Returns the illicit
16 payments and benefits that he received from his
17 Coconspirators.

18 OVERT ACTS

19 In furtherance of this conspiracy, and to effect the objects
20 thereof, on or about the dates set forth below, defendant committed
21 and caused to be committed, within the Southern District of
22 California, and elsewhere, the following overt acts:

- 23 a. On or about May 1, 2000, Coconspirator No. 1 paid \$70,000
24 (with personal check no. 1039) to defendant, which
25 defendant deposited into his personal bank account at Union
26 Bank of California in San Diego County, California;
27 b. On or about May 1, 2000, Coconspirator No. 1 paid \$30,000
28 (with personal check no. 1040) to defendant, which

Def. Initials AVC

- 1 defendant deposited into his personal bank account at
2 Congressional Federal Credit Union in Washington, D.C.;
- 3 c. Between on or about October 23, 2000 and March 29, 2001,
4 Coconspirator No. 1 paid \$11,116.50 to CIT Group towards a
5 mortgage held on defendant's yacht, the Kelly C;
- 6 d. On or about August 16, 2001, defendant failed to declare as
7 income on his 2000 federal individual Income tax return
8 (Form 1040) over \$100,000 in illicit payments and benefits
9 that he received during the 2000 tax year;
- 10 e. On or about November 16, 2001, Coconspirator No. 2 paid
11 \$12,000 (with corporate check no. 2056) to an antiques
12 store for three nightstands, one leaded glass cabinet, one
13 washstand, one buffet, and four armoires, which were
14 delivered to defendant;
- 15 f. On or about December 3, 2001, Coconspirator No. 3 paid
16 \$200,000 to a company controlled by Coconspirator No. 4,
17 which wired the money into an escrow account set up to
18 purchase defendant's Arlington condominium;
- 19 g. On or about December 10, 2001, Coconspirator No. 2 paid
20 \$50,000 (with corporate check no. 2027) to a company
21 controlled by Coconspirator No. 4;
- 22 h. On or about December 27, 2001, Coconspirator No. 4 paid
23 \$50,000 (with corporate check no. 32399) to defendant,
24 which defendant deposited into his personal bank account at
25 Union Bank of California in San Diego County, California;
- 26 i. On or about January 24, 2002, Coconspirator No. 2 paid
27 \$6,632 (with a corporate American Express credit card) to
28

Def. Initials *DC*

1 a furniture store for a leather sofa and a sleigh-style
2 bed, which were delivered to defendant;

3 j. On or about February 5, 2002, Coconspirator No. 2 paid
4 \$7,200 (with corporate check no. 2251) to an antiques store
5 for an antique Louis Phillipe period commode, c. 1850, and
6 a Restoration period commode, 4 drawers, c. 1830, which
7 were delivered to defendant;

8 k. On or about February 27, 2002, Coconspirator No. 3 paid
9 \$10,000 (with corporate check no. 1005) to defendant, which
10 defendant deposited into his personal bank account at
11 Congressional Federal Credit Union in Washington, D.C.;

12 l. On or about April 6, 2002, Coconspirator No. 2 paid \$13,500
13 (with personal check no. 4609) to defendant for the
14 purchase of a Rolls Royce, which defendant deposited into
15 his personal bank account at Congressional Federal Credit
16 Union in Washington, D.C.;

17 m. On or about May 4, 2002, Coconspirator No. 2 paid
18 \$17,889.96 (with corporate check no. 2448) to an automotive
19 repair shop for work done on defendant's Rolls Royce;

20 n. On or about August 30, 2002, Coconspirator No. 2 paid
21 \$140,000 (with official bank check no 6330014624) to a
22 third-party for the "Duke-Stir," which was moved to
23 defendant's boat slip for his use and enjoyment;

24 o. On or about September 10, 2002, defendant failed to declare
25 as income on his 2001 federal individual income tax return
26 (Form 1040) over \$250,000 in illicit payments and benefits
27 that he received during the 2001 tax year;
28

Def. Initials *HC*

- 1 p. On or about September 18, 2002, Coconspirator No. 3 paid
2 \$20,0000 (with corporate check no. 1045) to defendant,
3 which defendant deposited into his personal Congressional
4 Federal Credit Union account in Washington, D.C.;
- 5 q. On or about September 19, 2002, Coconspirator No. 2 paid
6 \$16,867.13 (with corporate check no. 2816) to a marine
7 services company for repairs to defendant's yacht, the
8 Kelly C;
- 9 r. On or about October 17, 2002, Coconspirator No. 2 paid
10 \$2,000 (with corporate check no. 2906) to the owner of a
11 marine services company for transportation expenses related
12 to defendant's yacht, the Kelly C;
- 13 s. On or about November 7, 2002, Coconspirator No. 2 paid
14 \$7,500 (with personal check no. 4781) to defendant for
15 yacht club fees, which defendant deposited into his
16 personal bank account at Bank of America in Virginia;
- 17 t. On or about November 22, 2002, Coconspirator No. 3 paid
18 \$40,000 (with corporate check no. 1095) to defendant, which
19 defendant deposited into his personal bank account at Union
20 Bank of California in San Diego County, California;
- 21 u. On or about November 25, 2002, Coconspirator No. 2 paid
22 \$1,119.95 (with a corporate American Express credit card)
23 to an automotive repair shop for work done on defendant's
24 Rolls Royce;
- 25 v. Between on or about December 27, 2002 and May 27, 2005,
26 Coconspirator No. 3 paid \$58,674.90 to CIT Group towards a
27 mortgage held on defendant's yacht, the Kelly C;
28

Def. Initials MC

- 1 w. On or about January 13, 2003, Coconspirator No. 2 paid
2 \$3,000 (with corporate check no. 3247) to defendant, which
3 defendant deposited into his personal bank account at Union
4 Bank of California in San Diego County, California;
- 5 x. On or about January 13, 2003, Coconspirator No. 2 paid
6 \$30,000 (with corporate check no. 3248) to defendant, which
7 defendant deposited into his personal bank account at Union
8 Bank of California in San Diego County, California;
- 9 y. On or about April 15, 2003, defendant failed to declare as
10 income on his 2002 federal individual income tax return
11 (Form 1040) over \$250,000 in illicit payments and benefits
12 that he received during the 2002 tax year;
- 13 z. On or about May 8, 2003, defendant caused to be filed with
14 the State of California Department of Motor Vehicles an
15 Application for Title or Registration and a Certificate of
16 Title, both of which had been altered to reflect a sales
17 price of \$18,000 for a 1999 GMC Suburban, which defendant
18 had purchased from Coconspirator No. 2 for the below-
19 market-price of \$10,000;
- 20 aa. On or about May 14, 2003, Coconspirator No. 2 paid \$8,000
21 (with corporate check no. 3652) to defendant, which
22 defendant deposited into his personal account at the
23 Congressional Federal Credit Union in Washington, D.C.;
- 24 bb. On or about June 20-22, 2003, Coconspirator No. 2 paid
25 \$2,731.33 (with corporate checks nos. 3611 and 3909) to a
26 resort for defendant's lodging and meal expenses, a \$1,500
27 "gift certificate" (which defendant used to purchase a set
28 of earrings), and \$400 for a Greenbrier charm and necklace;

Def. Initials AKC

- 1 cc. On or about July 28, 2003, Coconspirator No. 2 paid \$9,200
2 (with a corporate check no. 3956) to a manufacturer for two
3 Laser Shot shooting simulators, which were delivered to
4 defendant;
- 5 dd. On or about September 14, 2003, Coconspirator No. 2 paid
6 \$19,025 (with personal check no. 4989) to defendant, which
7 defendant deposited into his personal bank account at Union
8 Bank of California in San Diego County, California;
- 9 ee. On or about November 5, 2003, defendant signed a sales
10 agreement for the sale of his Del Mar home, which reflected
11 an inflated price of \$1.5 million and listed Coconspirator
12 No. 2 as the buyer;
- 13 ff. On or about November 6, 2003, defendant sought from
14 Coconspirator No. 2 an additional \$175,000 for defendant's
15 purchase of the Rancho Santa Fe Home;
- 16 gg. On or about November 7, 2003, defendant signed a second
17 sales agreement for the Del Mar home, which reflected a
18 further inflated price of \$1,675,000 and concealed
19 Coconspirator No. 2's participation by removing his name
20 and listing 1523 New Hampshire Ave., LLC as the buyer;
- 21 hh. On or about November 18, 2003, defendant received from
22 Coconspirator No. 2 a 1523 New Hampshire Ave., LLC check
23 (no. 1027) in the amount of \$18,160.98, and a wire transfer
24 (sequence no. 031118003135) in the amount of \$1,664,300,
25 which were credited to a Heritage Escrow Company escrow
26 account (no. 21260) for Coconspirator No. 2's purchase of
27 the Del Mar home;
28

Def. Initials *RKC*

- 1 ii. On or about November 25, 2003, defendant caused \$1,456,374
2 (the net proceeds from the sale of his Del Mar home) to be
3 credited to a Heritage Escrow Company escrow account (no.
4 21256) that had been set up for defendant's purchase of the
5 Rancho Santa Fe home;
- 6 jj. On or about December 1, 2003, Coconspirator No. 4 wire
7 transferred loan proceeds of \$1,095,000 into the escrow
8 account that had been set up for defendant's purchase of
9 the Rancho Santa Fe home;
- 10 kk. On or about December 4, 2003, defendant caused
11 \$2,372,616.33 to be wired into the bank account of the
12 seller of the Rancho Santa Fe home;
- 13 ll. On or about December 31, 2003, Coconspirator No. 2 paid
14 \$115,100 (with corporate check no. 4704 made payable to
15 "Top Gun Enterprises, Inc.") to defendant, which defendant
16 deposited into his personal bank account at Union Bank of
17 California in San Diego County, California;
- 18 mm. On or about February 26, 2004, Coconspirator No. 2 paid
19 \$11,393.56 (with a corporate American Express credit card)
20 to a moving company for the shipment of defendant's
21 household furnishings from his Arlington Condominium to his
22 Rancho Santa Fe Home;
- 23 nn. On or about March 8, 2004, Coconspirator No. 2 paid
24 \$8,166.25 (with a corporate American Express credit card)
25 to various third parties for defendant's charter jet, hotel
26 and meal expenses;
- 27 oo. On or about April 15, 2004, defendant failed to declare as
28 income on his 2003 federal individual income tax return

Def. Initials RUC

1 (Form 1040) over \$500,000 in illicit payments and benefits
2 that he received during the 2003 tax year;

3 pp. On or about May 13, 2004, Coconspirator No. 1 paid \$525,000
4 (wire reference no. 16594) to a company controlled by
5 Coconspirator No. 3, in order to pay off the second
6 mortgage on defendant's Rancho Santa Fe Home;

7 qq. On or about May 25, 2004, Coconspirator No. 2 paid
8 \$2,081.30 (with a corporate American Express credit card)
9 to a Washington, D.C., hotel for defendant's daughter's
10 graduation party;

11 rr. In or about June 2004, defendant received from
12 Coconspirator No. 2 \$6,500 in cash;

13 ss. On or about June 17, 2004, Coconspirator No. 2 paid \$18,000
14 (with corporate check no. 5606 made payable to "Top Gun
15 Enterprises, Inc./R. Cunningham") to defendant, which
16 defendant deposited into his personal bank account at Union
17 Bank of California in San Diego County, California;

18 tt. On or about August 25, 2004, Coconspirator No. 2 paid
19 \$171,000 (with corporate check no. 6019 made payable to
20 "Top Gun Enterprises, Inc. R.H. Cunningham"), which
21 defendant caused to be transacted through a company
22 controlled by Coconspirator No. 3;

23 uu. On or about August 25, 2004, Coconspirator No. 2 paid
24 \$329,000 (with corporate check no. 6023 made payable to
25 "Top Gun Enterprises, Inc. R.H. Cunningham"), which
26 defendant caused to be transacted through a company
27 controlled by Coconspirator No. 3;
28

Def. Initials ABC

- 1 vv. Between on or about November 29, 2004 and June 15, 2005,
2 Coconspirator No. 3 paid \$28,237.20 to Washington Mutual
3 Bank for monthly mortgage payments on defendant's Rancho
4 Santa Fe home;
- 5 ww. On or about April 15, 2005, defendant failed to declare as
6 income on his 2004 federal individual income tax return
7 (Form 1040) over \$1,000,000 in illicit payments and
8 benefits that he received during the 2004 tax year;
- 9 xx. On or about May 7, 2005, Coconspirator No. 2 paid
10 approximately \$15,200 (with corporate check no. 7243) for
11 one Indo Herati, one Karaja, one Indo Keshan, and two Cino
12 Kerman rugs, which were delivered to defendant;
- 13 yy. Between on or about November 2001 through May 2005,
14 Coconspirator No. 2 paid more than \$50,000 to various
15 antiques stores for additional antiques and furnishings,
16 including silver candelabras, glass vases, antique
17 armoires, Persian-style carpets, and custom oak and leaded
18 glass doors, all of which were delivered to defendant; and
- 19 zz. Between on or about January 2000 through Spring 2005,
20 Coconspirators Nos. 1 and 2 paid more than \$10,000 to
21 various resorts, hotels, and restaurants for defendant's
22 meals and entertainment expenses.

23 TAX EVASION

24 On or about April 15, 2005, within the Southern District of
25 California, defendant willfully evaded and defeated his lawful income
26 tax due and owing for the calendar year 2004, by preparing, signing
27 and filing with the Internal Revenue Service under penalty of perjury,
28 a false and fraudulent joint U.S. Individual Income Tax Return (2004

Def. Initials *RLC*

1 Form 1040), in which he falsely stated that his joint taxable income
2 was \$121,079, and that he was due a refund of \$8,504, whereas, as he
3 then knew, his joint taxable income was at least \$1,215,458, and there
4 was a joint taxable income due and owing of at least \$385,077.

5 III

6 PENALTIES

7 Defendant understands that the crimes to which defendant is
8 pleading guilty carry the following penalties:

9 Conspiracy - 18 U.S.C. § 371

- 10 A. a maximum 5 years in prison;
11 B. a maximum \$250,000 fine;
12 C. a mandatory special assessment of \$100; and
13 D. a term of supervised release of up to ^{three} one year?

14 Tax Evasion - 26 U.S.C. § 7201

- 15 A. a maximum 5 years in prison;
16 B. a fine of up to the greater of \$100,000 or twice the gross
17 gain or loss from the offense;
18 C. a mandatory special assessment of \$100; and
19 D. a term of supervised release of up to ^{three} one year?

20 Defendant understands that failure to comply with any of the
21 conditions of supervised release may result in revocation of
22 supervised release, requiring defendant to serve in prison all or part
23 of the term of supervised release.

24 Defendant further understands that by pleading guilty, defendant
25 may become ineligible for federal benefits.

26
27
28
Def. Initials RLC

IV

FORFEITURE

Defendant agrees to forfeit all of his right, title, and community property interest in the following assets, which constitute or were derived from proceeds traceable to violations 18 U.S.C. §§ 201, 1341, 1343, and 1346 or which are substitute assets:

- a. The parcel of real property and all improvements located on Via del Charro, Rancho Santa Fe, California, more fully described as Assessors Parcel No. 265-370-1000, Lot 10 of Rancho Del Cielo, in the County of San Diego, State of California, according to the map thereof No. 7059, filed in the Office of the County Recorder of San Diego County on September 22, 1971, or any proceeds from the sale thereof;
- b. \$1,851,508 in United States currency;
- c. Two silver candelabras with holders for three candles;
- d. One large, three-door (with drawers) wooden serving cabinet ("buffet") with curved wooden backing;
- e. One large Persian-style carpet with a red and blue background and dark border;
- f. One two-door wooden armoire containing two mirrored doors;
- g. Two matching wooden bedside tables;
- h. One large Persian-style carpet with a red and blue background and reddish border;
- i. One long carpet runner with geometric patterns in the middle surrounded by light background with white and blue striped border pattern;
- j. One two-door wooden armoire with a flat top hidden by a curved wooden facade;

Def. Initials DHC

- 1 k. One French walnut wooden armoire containing two mirrored
2 doors in front;
3 l. One Persian-style carpet with a red and blue background and
4 bluish border;
5 m. Two blue glass vases;
6 n. One antique wooden side table;
7 o. One leather Mastercraft sofa;
8 p. One sleigh-style bed;
9 q. One Persian-style carpet with blue and beige pattern;
10 r. One two-door wooden armoire containing two doors with
11 stained glass inserts;
12 s. One wooden sideboard with turned wooden spindles;
13 t. One red and bluish pattern Persian-style carpet;
14 u. One three-door wooden armoire containing large,
15 rectangular-shaped mirrors;
16 v. One carpet runner approximately 20 to 30 feet with a red
17 floral pattern;
18 w. One three-panel wooden/rattan screen with curved top;
19 x. One Persian-style carpet with a beige, blue and red
20 pattern;
21 y. One wooden armoire approximately 12 feet in height;
22 z. One large, Persian-style carpet with a predominantly red
23 pattern and dark border;
24 aa. One wooden dresser approximately 4 feet in width by 3 feet
25 in height;
26 bb. One dark brown wooden armoire approximately 10 feet in
27 height;
28 cc. One wooden china hutch with stained glass panels;

Def. Initials *ENC*

- 1 dd. One two-door, wooden, flat-topped armoire with a full-
2 length mirror;
3 ee. One three-door wooden dresser;
4 ff. One wooden, flat-topped armoire with a full-length mirror
5 on a middle panel;
6 gg. Three antique oak doors with leaded glass panels; and
7 hh. One Greenbrier Spring House charm and necklace.

8 To the extent necessary, defendant further agrees not to contest
9 the administrative forfeiture of the foregoing assets. Further,
10 defendant knowingly and voluntarily waives any rights and defenses he
11 may have under the Excessive Fines Clause of the Eighth Amendment to
12 the United States Constitution to the forfeiture of the above-
13 described property in this proceeding or any related civil proceeding.

14 V

15 DEFENDANT'S WAIVER OF TRIAL RIGHTS

16 Defendant understands that this guilty plea waives the right to:

- 17 A. continue to plead not guilty and require the Government to
18 prove the elements of the crime beyond a reasonable doubt;
19 B. a speedy and public trial by jury;
20 C. the assistance of counsel at all stages of trial;
21 D. confront and cross-examine adverse witnesses;
22 E. present evidence and to have witnesses testify on behalf of
23 defendant;
24 F. not testify or have any adverse inferences drawn from the
25 failure to testify; and
26 G. contest the forfeiture of the above-described property.
27
28

Def. Initials AVC

VI

DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE
PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

The Government represents that any information establishing the factual innocence of defendant known to the undersigned prosecutor in this case has been turned over to defendant. The Government will continue to provide such information establishing the factual innocence of defendant.

Defendant understands that if this case proceeded to trial, the Government would be required to provide impeachment information relating to any informants or other witnesses. In addition, if defendant raised an affirmative defense, the Government would be required to provide information in its possession that supports such a defense. Defendant acknowledges, however, that by pleading guilty defendant will not be provided this information, if any, and Defendant also waives the right to this information. Finally, defendant agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of this information.

VII

DEFENDANT'S REPRESENTATION THAT GUILTY
PLEA IS KNOWING AND VOLUNTARY

Defendant represents that:

- A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel, and has a clear understanding of the charges and the consequences of this plea;
- B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this plea agreement or otherwise disclosed to the court;

Def. Initials *MC*

- 1 C. No one has threatened defendant or defendant's family to
2 induce this guilty plea; and
3 D. Defendant is pleading guilty because in truth and in fact
4 defendant is guilty and for no other reason.

5 VIII

6 AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE
7 SOUTHERN DISTRICT OF CALIFORNIA

8 This plea agreement is limited to the United States Attorney's
9 Office for the Southern District of California, and cannot bind any
10 other federal, state or local prosecuting, administrative, or
11 regulatory authorities, although the Government will bring this plea
12 agreement to the attention of other authorities if requested by
13 defendant.

14 IX

15 APPLICABILITY OF SENTENCING GUIDELINES

16 Defendant understands the sentence imposed will be based on the
17 factors set forth in 18 U.S.C. § 3553(a). Defendant understands
18 further that in imposing the sentence, the sentencing judge must
19 consult the United States Sentencing Guidelines (Guidelines) and take
20 them into account. Defendant has discussed the Guidelines with
21 defense counsel and understands that the Guidelines are only advisory,
22 not mandatory, and the court may impose a sentence more severe or less
23 severe than otherwise applicable under the Guidelines, up to the
24 maximum in the statutes of conviction. Defendant understands further
25 that the sentence cannot be determined until a presentence report has
26 been prepared by the U.S. Probation Office and defense counsel and the
27 Government have had an opportunity to review and challenge the
28 presentence report. Nothing in this plea agreement shall be construed

Def. Initials RLC

1 as limiting the Government's duty to provide complete and accurate
2 facts to the district court and the U.S. Probation Office.

3 X

4 SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

5 This plea agreement is made pursuant to Federal Rule of Criminal
6 Procedure 11(c)(1)(B). Defendant understands that the sentence is
7 within the sole discretion of the sentencing judge. The Government
8 has not made and will not make any representation as to what sentence
9 defendant will receive. Defendant understands that the sentencing
10 judge may impose the maximum sentence provided by statute, and is also
11 aware that any estimate of the probable sentence by defense counsel
12 is a prediction, not a promise, and is not binding on the Court.
13 Likewise, the recommendation made by the Government is not binding on
14 the Court, and it is uncertain at this time what defendant's sentence
15 will be. Defendant also has been advised and understands that if the
16 sentencing judge does not follow any of the parties' sentencing
17 recommendations, defendant nevertheless has no right to withdraw the
18 plea.

19 XI

20 PARTIES' SENTENCING RECOMMENDATIONS

21 A. SENTENCING GUIDELINE CALCULATIONS

22 Although the parties understand that the Guidelines are only
23 advisory and just one of the factors the court will consider under 18
24 U.S.C. § 3553(a) in imposing a sentence, the parties **will jointly**
25 **recommend** that the Court utilize the November 2004 Guideline Manual
26 and the following Base Offense Levels, Specific Offense
27 Characteristics, and Adjustments set forth in the Guidelines:

28
Def. Initials lsc

Conspiracy

1. Base Offense Level [§ 2C1.1(a)(1)]	14
2. More than one Bribe [§ 2C1.1(b)(1)]	+2
3. Value of payments and benefits received [§ 2C1.1(b)(2)]	+16
4. Elected Public Official [§ 2C1.1(b)(3)]	+4
5. Acceptance of Responsibility [§ 3E1.1]	-3
	<u>33</u>

Tax Evasion

1. Base Offense Level [§ 2T4.1 (H)]	20
2. > \$10,000 in one year [§ 2T1.1 (b)(1)]	+ 2
3. Sophisticated Means [§ 2T1.1 (b)(2)]	+ 2
4. Acceptance of Responsibility [§ 3E1.1]	-3
	<u>21</u>

The above calculations result in a Total Offense Level of 33 and a guideline range of 135 to 168 months (assuming that the defendant falls within Criminal History Category I).

The parties agree to recommend jointly that if the sentence imposed on Count One is less than the total punishment, then the sentence imposed on Count Two shall run consecutively to the extent necessary to produce a combined sentence equal to the total punishment, as mandated by Guidelines § 5G1.2(d).

B. ACCEPTANCE OF RESPONSIBILITY

Notwithstanding paragraph A.3 above, the Government will not recommend any adjustment for Acceptance of Responsibility if defendant:

1. Fails to admit a complete factual basis for the plea at the time it is entered, or

Def. Initials *AK*

2. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the Court or probation officer, or
3. Fails to appear in court, or
4. Engages in additional criminal conduct, or
5. Attempts to withdraw the plea, or
6. Refuses to abide by any lawful court order, or
7. Contests the forfeiture(s) or assists any third party in contesting the forfeiture of properties seized in connection with this case.

C. OTHER ADJUSTMENTS

The parties agree that both the Government and the defendant are free to argue for or against any upward or downward adjustments (**other than arguing against those listed above**), including any adjustments based upon aggravating role, mitigating role, or obstructing and impeding the administration of justice.

D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

There is **no** agreement as to defendant's Criminal History Category.

E. DEPARTURES

The parties agree that both the Government and defendant are free to argue for or against any upward or downward departures.

F. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

The parties agree that the facts in the "factual basis" section of this agreement are true, and may be considered as "relevant conduct" under USSG § 1B1.3 and as the nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

Def. Initials 

1 G. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

2 The parties agree that the Government will recommend that
3 defendant be sentenced within the advisory Guidelines range as
4 calculated by the Government pursuant to this agreement. However, if
5 the Court adopts an offense level or downward adjustment or departure
6 (other than a downward departure pursuant to the Government's
7 recommendation under 18 U.S.C. § 3553, or § 5K1.1 of the Sentencing
8 Guidelines, as described in Section XIV below) below the Government's
9 recommendations in this plea agreement, the Government will recommend
10 a sentence as near as possible to what the sentence would have been
11 if the Government's recommendations had been followed.

12 H. SPECIAL ASSESSMENT

13 The parties will jointly recommend that defendant pay a special
14 assessment in the amount of \$200.00 to be paid forthwith at time of
15 sentencing. The special assessment shall be paid through the office
16 of the Clerk of the District Court by bank or cashier's check or money
17 order made payable to the "Clerk, United States District Court."

18 I. FINE

19 Fine. The parties have reached no agreement on the appropriate
20 fine, if any, to be imposed upon defendant.

21 Any fine shall be paid through the Office of the Clerk of the
22 District Court by bank or cashier's check or money order made payable
23 to the "Clerk, United States District Court."

24 Defendant agrees that, before sentencing, defendant shall provide
25 to the United States, under penalty of perjury, a financial disclosure
26 form listing all his assets and financial interests valued at more
27 than \$1,000. Defendant understands that these assets and financial
28 interests include all assets and financial interests in which

Def. Initials RVC

1 defendant has an interest (or had an interest subsequent to December
2 31, 1999), direct or indirect, whether held in defendant's own name
3 or in the name of another, in any property, real or personal.
4 Defendant shall also identify all assets valued at more than \$5,000
5 which have been transferred to third parties since January 1, 2000,
6 including the location of the assets and the identity of the third
7 party(ies).

8 The parties will jointly recommend that as a condition of
9 probation or supervised release, defendant will notify the Collections
10 Unit, United States Attorney's Office, of any interest in property
11 obtained, directly or indirectly, including any interest obtained
12 under any other name, or entity, including a trust, partnership or
13 corporation after the execution of this plea agreement until the fine
14 or restitution is paid in full.

15 The parties will also jointly recommend that as a condition of
16 probation or supervised release, defendant will notify the Collections
17 Unit, United States Attorney's Office, before defendant transfers any
18 interest in property owned directly or indirectly by defendant,
19 including any interest held or owned under any other name or entity,
20 including trusts, partnerships and/or corporations.

21 XII

22 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

23 In exchange for the Government's concessions in this plea
24 agreement, defendant waives, to the full extent of the law, any right
25 to appeal or to collaterally attack the conviction and sentence,
26 including any restitution order, unless the court imposes a custodial
27 sentence greater than the high end of the Guidelines range (or
28 statutory mandatory minimum term, if applicable) recommended by the

Def. Initials *RWC*

1 Government pursuant to this plea agreement at the time of sentencing.
2 If the custodial sentence is greater than the high end of that range,
3 defendant may appeal, but the Government will be free to support on
4 appeal the sentence actually imposed. If defendant believes the
5 Government's recommendation is not in accord with this plea agreement,
6 defendant will object at the time of sentencing; otherwise the
7 objection will be deemed waived.

8 XIII

9 CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT
10 THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE
11 THE PLEA

12 This plea agreement is based on the understanding that, prior to
13 defendant's sentencing in this case, defendant has not committed or
14 been arrested for any offense not known to the Government prior to
15 defendant's sentencing. This plea agreement is further based on the
16 understanding that defendant will commit no additional criminal
17 conduct before sentencing. If defendant engages in additional
18 criminal conduct during this period, or breaches any of the terms of
19 any agreement with the Government, the Government will not be bound
20 by the recommendations in this plea agreement, and may recommend any
21 lawful sentence. In addition, at its option, the Government may move
22 to set aside the plea.

23 XIV

24 TAX COMPLIANCE

25 The Defendant agrees to work with the Internal Revenue Service
26 to file corrected income tax returns, including but not limited to
27 individual income tax returns for the years 2000 through 2004,
28 correctly with accurate and truthful information, pay any tax

Def. Initials *ABC*

1 liability due thereupon, including penalties and interest, and file
2 all future tax returns as required truthfully and honestly.

3 The Defendant agrees that he will pay in full his outstanding tax
4 liability once assessed, including penalties and interest, or enter
5 into an installment payment plan with the Collection Division of the
6 Internal Revenue Service. If he enters into any such agreement, he
7 shall make timely payments and shall abide by the terms of such
8 agreement.

9 XV

10 COOPERATION

11 Defendant has expressed a desire to provide substantial
12 assistance to the Government in the investigation and prosecution of
13 others, after entering his guilty plea. The Government has made no
14 evaluation whether the cooperation, if any, will be "substantial," or
15 whether it will merit a downward departure from the Sentencing
16 Guidelines.

17 Defendant agrees to be interviewed by federal and state law
18 enforcement agents and attorneys and to tell everything defendant
19 knows about every person involved presently or in the past directly
20 or indirectly in the acts and offenses identified in the Information
21 in this case, and all other acts and offenses related thereto, as well
22 as any other criminal offenses. Defendant also agrees to produce all
23 documents and other evidence in defendant's possession or control
24 related to these offenses.

25 Defendant agrees not to do any undercover work or tape record any
26 conversations or gather evidence unless instructed by the agent
27 assigned to defendant. Defendant can be prosecuted for any criminal
28 activity undertaken without instructions.

Def. Initials *ABC*

1 Defendant agrees to provide statements under penalty of perjury
2 and to testify before any federal or state grand jury, and at any
3 pretrial, trial or post-trial proceedings. Defendant will provide
4 complete, truthful and accurate information and testimony. Defendant
5 agrees to submit to a polygraph examination to test the truthfulness
6 of defendant's statements, upon request by the Government.

7 The Government agrees that, if defendant fully complies with this
8 plea agreement, it will not make use of any statements made by
9 defendant during the period of post-plea cooperation in any further
10 prosecution of defendant for any offense, or in defendant's sentencing
11 as provided in Guideline § 1B1.8. If defendant does not fully comply
12 with this plea agreement, all statements made by defendant before,
13 during and after this plea agreement, and any leads or evidence
14 derived from such statements can be used against defendant and are
15 admissible in court.

16 Statements made by defendant pursuant to this plea agreement are
17 not statements "made in the course of any proceedings under Rule 11
18 of the Federal Rules of Criminal Procedure" and are not statements
19 "made in the course of plea discussions."

20 The determination as to whether defendant has provided
21 substantial assistance is solely for United States Attorney's Office
22 to make. If the United States Attorney's Office decides that
23 defendant has provided substantial assistance, and has fully complied
24 with this plea agreement, it will file a motion for a downward
25 departure under 18 U.S.C. § 3553, or § 5K1.1 of the Sentencing
26 Guidelines. Defendant acknowledges that even if the Government makes
27 a motion, the Court may reject the Government's motion and
28

Def. Initials ROC

1 recommendation for departure and refuse to depart downward, and
2 defendant would not be allowed to withdraw his guilty plea.

3 If the United States Attorney's Office decides to make a
4 substantial assistance motion, it will inform the sentencing judge of:
5 (1) this plea agreement; (2) the nature and extent of defendant's
6 activities in this case; (3) the full nature and extent of defendant's
7 cooperation with the Government and the date when such cooperation
8 commenced; and (4) all information in the possession of the Government
9 relevant to sentencing.

10 If defendant provides materially false, incomplete, or misleading
11 testimony or information, or breaches this plea agreement in any other
12 way, the Government may prosecute defendant in connection with all
13 federal criminal violations of which it is aware, including false
14 statements, perjury and obstruction of justice, and defendant's
15 sentencing guidelines may be adjusted for making false statements
16 (e.g., § 3C1.1 and § 3E1.1). In addition, the Government may move to
17 set aside this plea agreement, and prosecute defendant on any charges,
18 including those in the Information in this case. However, if the
19 Government elects not to set aside the plea agreement, defendant
20 agrees that the Government may recommend any lawful sentence without
21 restriction by this plea agreement. Any prosecution and sentence
22 resulting from a breach of this plea agreement may be based on
23 information provided by defendant.

24 XVI

25 ENTIRE AGREEMENT

26 This plea agreement embodies the entire plea agreement between
27 the parties and supersedes any other plea agreement, written or oral.
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Def. Initials LHC

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XVII

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XVIII

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this plea agreement, defendant certifies that defendant has read all 33 pages of this agreement. Defendant has discussed the terms of this plea agreement with defense counsel and fully understands its meaning and effect.

Def. Initials

LHC

XIX

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with
counsel's representation.

CAROL C. LAM
United States Attorney

11/23/05
DATED

Sanjay Bhandari by PBM
SANJAY BHANDARI
Assistant U.S. Attorney

11/23/05
DATED

Jason A. Forge by PBM
JASON A. FORGE
Assistant U.S. Attorney

11/23/05
DATED

PH Halpern
PHILLIP L.B. HALPERN
Assistant U.S. Attorney

November 23, 2005
DATED

K. Lee Blalack, II
K. LEE BLALACK
Attorney for Defendant

November 23, 2005
DATED

Mark Holscher by KIR
MARK HOLSCHER
Attorney for Defendant

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR
UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS"
PARAGRAPH ABOVE ARE TRUE.

23 NOV 05
DATED

Randall H. Cunningham
RANDALL H. CUNNINGHAM
Defendant

Def. Initials RHC