UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA v. DOUG ALLEN	No. 12 CR 567-2 Judge Ronald A. Guzman

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant DOUG ALLEN, and his attorney, VALARIE HAYS, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with mail fraud, in violation of Title 18, United States Code, Section 1341 (Counts 2, 3, 5, 6-9, 11-13, and 15), and wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts 4, 10 and 14).

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

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following count of the indictment: Count 14, which charges defendant with wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 14 of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

Beginning no later than in or about 2001 and continuing until approximately February 2009, at Oak Brook, Willowbrook, and Burr Ridge, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant ALLEN, William Mastro, Mark Theotikos, Co-Schemer A, certain consignors, other auction house employees, and others known and unknown, knowingly devised and intended to devise, and participated in, a scheme and artifice to defraud the customers of Mastro Auctions, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by concealment of material facts. For the purpose of executing the scheme, defendant ALLEN caused to be transmitted an electronic mail message from the Northern District of Illinois to an electronic mail server located in Georgia.

Specifically, at times between 2002 and 2009, defendant ALLEN was the President and Chief Operating Officer of Mastro Auctions ("the Auction House").

The Auction House accepted items, often sports memorabilia, from consignors and sold those items to bidders through auction. The Auction House held several auctions each year. The auctions were typically online, with bids placed electronically by customers of the Auction House. In connection with each auction, the Auction House caused catalogs to be sent across state lines to Auction House customers. According to the terms of the auction catalogs, the bidder who placed the highest bid at the conclusion of the auction "won" the item and purchased it from the consignor at the price set by the winning bid (the "hammer price"). Bidders paid a fee to the Auction House to purchase an item ("the buyer's premium"), and consignors were supposed to pay a commission to the defendant's company on items sold at auction ("the seller's fee").

At certain times between 2002 and 2009, defendant ALLEN, Mastro, Theotikos, and others engaged in practices designed to fraudulently inflate prices paid by bidders. Other times, defendant ALLEN, Mastro, Theotikos, and others engaged in practices designed to protect the interests of consignors and sellers, which had the effect of artificially inflating the prices paid by some bidders.

Defendant ALLEN, Mastro and Theotikos sometimes placed "shill bids," meaning fictitious bids placed without the intent to win the item or to institute an undisclosed reserve, which had the effect of artificially inflating the price of an item in the auction. Defendant ALLEN understood that by placing shill bids on items that he did not intend to win, he artificially stimulated bidding in the auctions amongst legitimate bidders who believed that they were bidding against other

legitimate bidders, and not the auction house or consignor of the item. In addition to stimulating bidding and increasing the number of bidders, defendant ALLEN knew that the bids he, Mastro, Theotikos, and other employees, including C.P. and K.S., placed at times inflated the price of items, resulting in bidders likely paying more for an item than what they otherwise would have paid.

For example, in approximately December 2008, defendant ALLEN, at times, placed bids in order to effectively implement an undisclosed reserve and to drive up the prices that were promised a certain consignor for baseball cards that were being auctioned by the Auction House. Defendant ALLEN was in communication with the consignor during the auction and they discussed placing shill bids to inflate the price of the consignor's items in the auction. For instance, defendant ALLEN said words to the effect of, "I am watching the three cards…" The consignor, in response questioned, "[s]o, me or you making them go to reserve?" Defendant ALLEN also stated to the consignor, "Gypsy Queen is at $22k….not me (another bidder) whatcha think?" and "I will hit it (bid) one more time and let it go…cool?" Defendant ALLEN also told the consignor, "If I go $23k next bid is $24k I don't want to be at $25k. Are you ok if I let things (the auction) run their course after that." Bidding records associated with these emails indicate that defendant ALLEN used the account belonging to the Auction House corporate account.

Defendant ALLEN placed, and caused or allowed others to place, shill bids using several accounts, including an account belonging to Owner A and the Auction House's corporate account. When placing bids using Owner A's account, Allen

frequently said words to the effect of "I put [name] on that item," meaning that defendant ALLEN had used Owner A's account to fictitiously drive up the price of an item.

Defendant ALLEN also had access to ceiling bids because of his position, and, in some instances, received ceiling bids directly from certain bidders who placed their bids with defendant. A ceiling bid, in effect, instructed the Auction House (often through its software) to competitively bid, according to established increments, on the bidder's behalf until the ceiling bid value was reached. At times during the scheme, defendant ALLEN used ceiling bid information to drive up the bids of certain bidders, by placing shill bids below the bidders' ceiling bids. Defendant ALLEN placed shill bids knowing that his bids would be automatically exceeded by the software used by the Auction House and his bids would not win. For example, in the April 2008 auction, defendant ALLEN had information that Individual C.L. placed a ceiling bid of $80,000 on a Mayo Football card set. Defendant ALLEN, using a paddle belonging to Owner A, placed multiple shill bids on the Mayo Football card set knowing that his bids would not win and would trigger Individual C.L.'s ceiling bid. As a result of the shill bids placed, defendant ALLEN triggered Individual C.L.'s ceiling bid of $80,000, which was ultimately the winning bid.

In the April 2008 auction, defendant ALLEN, using his own account, placed shill bids on a Walter Johnson bat in order to drive up the price of the item. Defendant ALLEN had information that Individual S.G. placed a ceiling bid of

$75,000 on the Walter Johnson bat. After placing multiple shill bids early in the auction, defendant ALLEN, using the account belonging to Owner A, placed a final shill bid on this item. As a result, defendant ALLEN triggered Individual S.G.'s ceiling bid of $75,000, which was ultimately the winning bid.

At times, defendant ALLEN, Mastro and Theotikos ensured that when they placed a shill bid, and that shill bid was the highest bid at the end of an auction, that item would not be purchased by the shill bidder. Instead, defendant ALLEN, Mastro, and Theotikos sometimes canceled, or caused the cancellation of, the sale of the item. As a result, defendant ALLEN, Mastro and Theotikos had an advantage over legitimate bidders because they knew that if their shill bid was the winning bid on an item, the sale would be cancelled. This allowed defendant ALLEN, Mastro, and Theotikos to bid in the auctions without risk, and at the same time inflate the bid price, the seller's fees and buyer's premium. Following the cancellation of a sale, defendant ALLEN instructed Co-Schemer A and other Auction House employees to reconcile invoices and the shipment of items with canceled sales.

Defendant ALLEN also knowingly permitted certain consignors to place bids on the consignors' own items, using shill bidding accounts belonging to nominees of these consignors, which had the effect of artificially inflating the sale price of those items. Between 2002 and 2009, these consignors placed hundreds of bids on items the consignors owned, using shill accounts. At times, defendant ALLEN facilitated these consignors' use of shill bids. When these consignors' shill bids were the winning bid for an item, defendant ALLEN sometimes directed Auction House

employees, including mail room employees, to return the auction item to the consignor, rather than delivering it to the nominee who had "won" the item. At times, defendant ALLEN waived fees due to the Auction House, including the hammer price, buyer's premium, and seller's fee. By waiving the fees, defendant ALLEN gave those consignors an advantage over legitimate bidders because defendant enabled those consignors to bid, and shill bid, in auctions without risk. At times when fees were imposed on a consignor whose shill account had won an item owned by the consignor, defendant ALLEN caused the consignors, not the consignor's nominee, to pay the fees associated with the transaction. Defendant ALLEN directed Auction House employees, including Co-Schemer A, to modify the Auction House's records to charge the consignor, not the consignor's nominee, with fees associated with the sale of the auction item.

In October 2007, the Auction House published a "Code of Conduct" of which defendant ALLEN was the author. The Code of Conduct stated that access to "ceiling bid" information would be limited to one employee who would be prevented from bidding. At times after October 2007, the Auction House computer system allowed defendant ALLEN and other employees with bidding privileges access to ceiling bid information.

The October 2007 Code of Conduct stated that the Auction House would disclose to customers if items were owned by the Auction House, its employees, or any affiliated parties. Defendant ALLEN knew that at times after October 2007, the Auction House failed to disclose items that were owned by the Auction House, its

employees, and related entities, including items owned by a company affiliated with the Auction House, called Historical Collectibles. All of Historical Collectibles' merchandise, records, and other assets were maintained at the Auction House. Between approximately April 2008 and February 2009, defendant ALLEN knew that the Auction House failed to disclose ownership of over 1,000 items owned by Historical Collectibles and placed for sale through the Auction House. Defendant ALLEN was aware that, beginning in late 2007 and continuing until at least late 2008, Mastro placed ceiling bids using shill accounts on several hundred items owned by Historical Collectibles, items that the Auction House effectively already owned. Defendant ALLEN understood that these ceiling bids, through the Auction House software, would automatically competitively bid against legitimate bidders. Mastro placed ceiling bids on Historical Collectibles items to stimulate bidding on those items, to protect the Auction House's investment in the items, and to insure that the items were not sold for a perceived undesirable price. At the time those ceiling bids were placed, defendant ALLEN knew that legitimate auction bidders would be unaware that it was Mastro, and not other legitimate bidders, who was bidding against them.

The October 2007 Code of Conduct stated that Auction House employees were prohibited from placing bids on items owned by the Auction House, other Auction House employees, or other affiliated entities or individuals. As explained above, at times after October 2007, defendant ALLEN and other employees placed bids on

auction items owned by defendant, the Auction House, Historical Collectibles, and other Auction House employees.

False Representations and Concealment of Material Facts

At no time did defendant ALLEN inform Auction House customers that he engaged in shill bidding, or that defendant facilitated certain consignors' use of shill accounts. Defendant ALLEN's failure to inform Auction House customers of this shill bidding activity was a material omission that impacted a bidder's decision to use the Auction House and bid on items. As defendant ALLEN knew, each Auction House catalog represented that "items are sold to the highest bidder." At the time the catalogs were printed, defendant ALLEN knew that the "items are sold to the highest bidder" statement was, at times, false. Specifically, defendant ALLEN knew that in some auctions the highest bidder was actually placed by a shill account, and the items were not sold, but the sale canceled.

Consignment agreements entered into by consignors and the Auction House stated that a consignor, or agent of the consignor, was prohibited from bidding on an item tendered to the Auction House by the consignor. The consignment agreements stated that if the consignor violated this provision, and had the highest bid on an item or lot, the consignor would be required to pay the Auction House the commission and buyer's premium on the item or lot upon which the consignor was the highest bidder. The consignment agreements further stated that there were no exceptions to this provision. At the time these statements were made, defendant ALLEN knew that certain consignors used shill accounts to bid on items owned by

the consignors, and defendant facilitated this practice at times. Defendant ALLEN also knew that, at times, consignors were not required to pay the buyer's premium on lots on which the consignors' nominees were the highest bidder.

After the close of each auction, the Auction House posted the results of the auction on its website and also distributed the auction results through the mail to certain people who participated in the auctions. Defendant ALLEN was aware at the time they were posted that the results, at times, contained false and misleading information. In particular, the results represented that items had been sold when, in reality, defendant ALLEN, Auction House employees, and certain consignors had placed the winning bid on multiple items and subsequently canceled the sales. Defendant ALLEN, Mastro, Theotikos, and other employees caused the items either to be returned to the original consignor, including the Auction House, or to be re-auctioned at a later date. The Auction House used the phony results to falsely represent that it sold in excess of 99% of items offered for sale.

Defendant ALLEN intended to defraud the victims of the scheme, namely, customers who believed that they were placing competitive bids against other legitimate bidders and who, as a result of the shill bidding, should have paid less for auction items than they did.

1869 Cincinnati Red Stockings Trophy Ball

In approximately December 2006, defendant ALLEN was aware that Mastro contacted Individual C.L., and told Individual C.L. that an 1869 Cincinnati Red Stockings trophy ball, which was associated with a collection of trophy balls that

Individual C.L. had previously purchased from the Auction House, was available for sale. At the time Mastro contacted Individual C.L., defendant ALLEN and Mastro were aware that the 1869 Cincinnati Red Stockings trophy ball had been returned to the Auction House by Purchaser A, following laboratory testing conducted on the trophy ball. Defendant ALLEN and Mastro were aware, based on the laboratory results, that the trophy ball contained paint which had been manufactured after World War II, thereby calling the item into question. The existence of the laboratory testing was material information that should have been disclosed to Individual C.L. On December 27, 2006, Mastro sold the 1869 Cincinnati Red Stockings trophy ball to Individual C.L. through the Auction House for approximately $62,000.

Elvis Presley Hair

On April 28, 2003, the Auction House sold what it purported to be the hair of Elvis Presley to an auction house customer/group of investors for a hammer price of $33,657. Following the purchase, the owners of the purported Presley hair submitted portions of the hair to a laboratory for DNA testing. Laboratory test results indicated that the specimen of hair belonged to four separate individuals, and was, therefore, not authentic Presley hair.

The owners of the purported Presley hair subsequently provided a copy of the laboratory results to defendant ALLEN and further requested a refund. On July 6, 2004, defendant ALLEN agreed to issue a refund in full, and an additional $2,500, for a total of $41,205. As part of the refund, the parties signed a document, provided by defendant ALLEN, which stated, in part, "it is agreed by all parties not to

disclose details of testing or any information related to the authentication of the hair." On June 29, 2004, the Auction House issued a refund check in the amount of $41,205.

In December 2005, August 2006, April 2007, and August 2008, defendant ALLEN re-sold portions of the returned Elvis hair for approximately $38,892 without informing Auction House customers of the DNA test results. The existence of the DNA laboratory testing called the authenticity of the hair into question, and was material information that should have been disclosed to the customers.

T206 Eddie Plank Baseball Card

On or about April 22, 2004, the Auction House sold a T206 Eddie Plank baseball card during the Spring 2004 Auction. After receiving the T206 Eddie Plank card from its consignor, and before defendant ALLEN sold it, defendant ALLEN sent the T206 Eddie Plank card to a restorer in California for alterations. Specifically, defendant ALLEN sent the restorer the T206 Eddie Plank card along with a T206 "donor card," meaning a card depicting another player from the same set. Defendant ALLEN instructed the restorer to replace and repair the back of the T206 Eddie Plank card using the T206 donor card. After receiving the altered card back from the restorer, defendant ALLEN sent the card to an employee to have the card graded. Neither defendant ALLEN or the employee ever disclosed to the grading company that the T206 Eddie Plank card had been altered. Defendant ALLEN knew that, had he disclosed that the card had been altered, the grading company would not have assigned the card a numerical grade reflecting the quality

of the card. The T206 Eddie Plank Card received a numerical grade of "6," which had the effect of artificially increasing the value of the card.

Defendant ALLEN subsequently placed the card for sale during the Spring 2004 Auction. Defendant never disclosed that the card had been restored or altered in any way. The T206 Eddie Plank card sold at auction for approximately $51,518. The fact that the card was restored was material information that defendant knew should have been disclosed to bidders.

Execution of the Scheme

On approximately December 18, 2008, at Burr Ridge, Illinois, for the purpose of executing the aforesaid scheme, defendant ALLEN knowingly caused to be transmitted by means of wire communication in interstate commerce certain wirings, signs, signals, and sounds, namely, an electronic mail message from the Northern District of Illinois to an electronic mail server located in Georgia, said message from defendant ALLEN to the consignor stating, "I will hit it one more time and let it go…cool."

Additional Conduct

Following defendant ALLEN's indictment in this case, and during the course of an ongoing investigation, defendant ALLEN stated that he wanted to cooperate with the government with the hope of obtaining a benefit from the government at the time of sentencing, namely, a recommendation for a reduction in his sentence. During the period of purported cooperation, government agents questioned defendant ALLEN about certain topics and individuals who were subjects of

ongoing investigations. One such subject, Subject A, was under investigation for false statements related to sports memorabilia. Defendant ALLEN, contrary to instructions provided by government employees, disclosed to Subject A certain areas of focus of the investigation and further told Subject A that he (defendant ALLEN) was wearing an undercover recording device. As a result of defendant ALLEN's disclosures, defendant ALLEN learned that Subject A made a phone call in defendant ALLEN's presence which was designed to mislead government agents when they later listened to the recording captured by defendant ALLEN. Specifically, defendant ALLEN learned that Subject A made the bogus call to provide false exculpatory information to the FBI through the undercover recording. Defendant ALLEN further advised Subject A that the FBI had asked logistical questions regarding Subject A's home. As a result of defendant ALLEN's disclosure, Subject A was prepared when law enforcement agents executed search warrants at his home and business. Specifically, Subject A told defendant ALLEN, "when they were asking about what dogs, I assumed they were coming and I talked to the kids…"

Unbeknownst to defendant ALLEN, Subject A began to cooperate with the government and conducted a consensually recorded undercover meeting with defendant ALLEN. During the consensually recorded undercover meeting, defendant ALLEN coached Subject A on how to respond to questions from the FBI regarding the timing of the call designed to throw off the FBI. Specifically, Subject A asked words to the effect of, "if they go and he says, yeah, [Subject A] told me to

do that that day, and they knew you were here, they are going to know I knew something. What's our story?" Defendant ALLEN coached Subject A to say, "because you're always worried when I ask questions about something that's not my business and you knew that was under investigation…if it ever got to the point, where why would you do a fake call in front of Doug, because Doug's my friend. We do a lot of business together, but I always wondered…"

During the undercover meeting, defendant ALLEN and Subject A further discussed the significance of never disclosing that defendant ALLEN tipped Subject A off to the government's investigation. Subject A stated, "…You have to swear on everything that you are never going to tell them you told me anything…you have to." Defendant ALLEN replied, "…it hurts me more than you." In addition to noting that they could both be facing obstruction charges, defendant ALLEN stated, "I know for me, okay, talk about protecting myself, under no circumstance could I ever tell them that, I, that you and I had any of these conversations cause…My whole cooperation is out the window." When Subject A later reiterated, "as long as you don't say shit that you were tipping me off…," defendant ALLEN answered, "Never. [Subject A, Subject A], not just for you, not just for you, believe me, never."

Maximum Statutory Penalties

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense also carries a maximum fine of $250,000, or twice the gross gain or gross loss

resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court unless it determines that restitution is not applicable because determining complex issues of fact related to the cause or amount of the victim losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed $100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as specified below:

a. **Applicable Guidelines**. It is the government's position that the Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. Defendant disagrees. It is defendant's position that the

November 2002 Sentencing Guidelines Manual should be considered. Consistent with the government's position, the following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2013 Guidelines Manual.

b. **Offense Level Calculations**.

i. Pursuant to Guideline § 2B1.1(a)(1), the base offense level is 7. It is defendant's position that the base offense level is 6, pursuant to the November 2002 Guidelines Manual.

ii. The parties acknowledge that there are alternative methodologies for the calculation of loss. It is the government's position that the offense level is increased 16 levels pursuant to Guideline § 2B1.1(b)(1)(I) because the loss is more than $1,000,000 but less than $2,500,000. It is defendant's position that pursuant to Guideline § 2B1.1(b)(1)(D), the offense level is increased 6 levels because the loss is more than $30,000 but less than $70,000. Each party is free to argue and to present evidence in support of its position at the time of sentencing.

iii. Pursuant to Guideline § 2B1.1(b)(2)(C), the offense level is increased 6 levels because the offense involved more than 250 victims. Defendant disagrees. Each party is free to argue and to present evidence in support of its position at the time of sentencing.

iv. It is the government's position that the offense level is increased 4 levels pursuant to Guideline § 3B1.1(a) because defendant was an organizer or leader of a criminal activity that involved five or more participants or

was otherwise extensive. It is defendant's position that the offense level is increased 3 levels pursuant to Guideline § 3B1.1(b) because defendant was a manager or supervisor and the criminal activity involved five or more participants or was otherwise extensive. Each party is free to argue and to present evidence in support of its position at the time of sentencing.

v. It is the government's position that the offense level is increased 2 levels pursuant to Guideline § 3C1.1 because defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and the obstructive conduct related to the defendant's offense of conviction and any relevant conduct or to a closely related offense. Defendant disagrees that he engaged in obstructive conduct related to his offense of conviction, any relevant conduct, or to a closely related offense. Each party is free to argue and to present evidence in support of its position at the time of sentencing.

vi. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level will be appropriate. The government reserves the right to take whatever position it deems appropriate at the time of sentencing with

respect to whether defendant has accepted responsibility within the meaning of Guideline § 3E1.1(a).

vii. If the Court determines that defendant has fully accepted responsibility within the meaning of Guideline § 3E1.1(a), and that the offense level is 16 or higher prior to the application of any reduction for acceptance of responsibility pursuant to § 3E1.1(a), the government will move for an additional one-level reduction in the offense level pursuant to Guideline § 3E1.1(b) because defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

c. **Criminal History Category**. With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range**. Therefore, based on the facts now known to the government, and if the Court determines that defendant has demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), it is the government's position that the anticipated offense level is 32, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 121 to 151 months' imprisonment.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. Each party is free to recommend whatever sentence it deems appropriate.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Regarding restitution, the parties agree that restitution is not applicable because determining complex issues of fact related to the cause or amount of the victim losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

13. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

14. Defendant agrees to pay the special assessment of $100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

15. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code,

Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

16. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

17. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 12 CR 567.

18. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

19. Defendant understands that by pleading guilty he surrenders certain

rights, including the following:

a. **Trial rights**. Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering

each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate

rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights

Presentence Investigation Report/Post-Sentence Supervision

20. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

21. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

22. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the

disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

23. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

24. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Conclusion

25. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

26. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further

understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

27. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

28. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

29. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

ZACHARY T. FARDON United States Attorney	DOUG ALLEN Defendant
NANCY DEPODESTA Assistant U.S. Attorney	VALARIE HAYS Attorney for Defendant
STEVEN J. DOLLEAR Assistant U.S. Attorney	