

U. S. DISTRICT COURT  
WESTERN DISTRICT ARKANSAS  
FILED

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

JUL 31 2013

CHRIS R. JOHNSON, CLERK  
BY  
DEPUTY CLERK

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 5:12CR50035-001 and
	)	No. 5:13CR50004-001
BRANDON LYNN BARBER	)	

**PLEA AGREEMENT**

Pursuant to Rule 11(c)(1) of the Federal Rules of Criminal Procedure, the parties hereto acknowledge that they have entered into negotiations which have resulted in this agreement. The agreement of the parties is as follows:

**COUNTS OF CONVICTION AND DISMISSAL**

1. The defendant, **BRANDON LYNN BARBER**, hereby agrees to plead guilty to Counts 13 and 25 of the Third Superseding Indictment filed in Case No. 5:12CR50035-001, Count 13 charging the defendant with Conspiracy to Commit Bankruptcy Fraud, in violation of 18 U.S.C. §§ 371 and 157; Count 25 charging the defendant with Money Laundering, in violation of 18 U.S.C. § 1957; and Count 1 of the Superseding Indictment filed in 5:13CR50004-001, charging the defendant with Conspiracy to Commit Bank Fraud, in violation of 18 U.S.C. §§ 1344 and 1349. If the Court accepts this plea agreement, once the Court has pronounced sentence, the Government will move to dismiss Counts 1 through 12, 14 through 24 and 26 of the Third Superseding Indictment in Case No. 5:12CR50035-001.

**AGREEMENT REGARDING FORFEITURE**

2. The defendant, **BRANDON LYNN BARBER**, understands that the Court will, upon acceptance of his guilty plea, enter an order of forfeiture as part of his sentence, and that the order

of forfeiture may include assets directly traceable to his offense, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offense. Specifically, the Court will order the forfeiture of the proceeds of the offense to which the defendant is pleading guilty, all property used to commit or to facilitate the commission of that offense, and all property traceable thereto. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of the Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change of plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

3. The Government expressly reserves the right to seek forfeiture, at sentencing, of a money judgment against the defendant equal to the amount of proceeds obtained as a result of the offenses to which the defendant is pleading guilty. In the event that the Court orders entry of a money judgment, the United States will not be limited to the forfeiture of the money judgment. Instead, the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) equivalent to the value of the money judgment, pursuant to 21 U.S.C. § 853(p). To the extent that it is not possible for the Court to make that determination prior to the date of sentencing, the defendant agrees to waive any right he may have to have the forfeiture determined at that time, and agrees that the Court may make any necessary factual determination in a post-sentencing proceeding and may amend the order of forfeiture and the judgment to include the forfeited property at that time.

4. The defendant agrees to assist fully in the forfeiture of the foregoing assets. The defendant agrees to disclose all of his assets and sources of income to the United States, and to take

all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. The defendant further agrees that he will not assist any third party in asserting a claim to the forfeited assets in an ancillary proceeding and that he will testify truthfully in any such proceeding.

5. The defendant further agrees to waive all constitutional, legal and equitable challenges (including direct appeal, *habeas corpus*, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this agreement, and will not assist any third party with regard to such challenge or review or with regard to the filing of a petition for remission of forfeiture.

**ADMISSION OF FACTUAL BASIS IN SUPPORT OF GUILTY PLEA(S)**

6. The defendant has fully discussed with defense counsel the facts of this case and the elements of the crime(s) to which the defendant is pleading guilty. The defendant has committed each of the elements of the crime(s) to which the defendant is pleading guilty, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

a. With regard to Indictment 5:12CR50035-001, **COUNT 13**, beginning in April 2008 and continuing through November 9, 2010, in the Western District of Arkansas and elsewhere, Brandon Barber reached an agreement and came to an understanding with K.

Vaughn Knight and James Van Doren to conceal and disguise income and funds belonging to Barber and transfer said funds into and through accounts belonging to Knight and Van Doren, thereby hiding it from creditors. Eventually, in order to execute and conceal the scheme to defraud creditors, a petition for bankruptcy under Title 11 of the United States Code was filed, to wit: In re: Brandon Lynn Barber, Debtor, No. 5:09-bk-73807. The petition failed to disclose the transfer of funds to Knight and Van Doren. Knight was Barber's attorney of record for the bankruptcy proceedings. Barber, advised by Knight, also made false and fraudulent representations in relation to his petition and the bankruptcy proceeding under Title 11.

b. On or about April 2, 2008, Barber was involved in the "Outfield Development" real estate transaction, wherein he received \$688,937. Barber's involvement was through EIA International, LLC, an entity owned by him. In an effort to conceal this money from his creditors, Barber entered into an agreement with Knight and Van Doren whereby Barber instructed the closing agent to wire the money to Knight's IOLTA account to "pay off Epsilon", which was an LLC owned in part by Van Doren. Knight attended the closing and was privy to the arrangements involving Barber's funds. The majority of the \$688,937 sent to Knight's IOLTA account were used to pay expenses on behalf of Barber with only approximately \$152,735 being paid over to Van Doren and/or Epsilon and, none of these funds were ever disclosed to the bankruptcy court as income on Barber's bankruptcy petition.

c. As part of the conspiracy, on or about September 29, 2008, Barber endorsed a check in the amount of \$64,000 over to Van Doren in order to hide said money from his

creditors. Van Doren then used the money to pay for Barber's living expenses. These funds were not disclosed as income on the bankruptcy petition.

d. As part of the conspiracy, on or between July 2008 and July 2009, Barber delivered a briefcase containing approximately \$30,000 in cash to Van Doren in order to hide said money from his creditors and to use the money for his own personal expenses. These funds were not disclosed as either assets or income on the bankruptcy petition.

e. As part of the conspiracy, on or about August 12, 2008, \$191,000 was transferred from Barber into the Knight Law Firm Account and then on August 13, 2008, \$151,000 of those funds were transferred by Knight to his IOLTA account. On August 15, 2008, \$95,000 from Knight's IOLTA account was used to purchase a cashier's check payable to Barber. Those funds were deposited into an account controlled by Barber. On August 21, 2008, an additional \$95,230.03 was wired to Citi Cards to make a payment on Barber's credit card account.

f. On or about October 7, 2008, Barber was involved in several real estate transactions that collectively were known as the Executive Plaza transactions. On or about October 31, 2008, Barber received \$314,000 for his involvement in these transactions, paid by Jeff Whorton. As part of the conspiracy and in an effort to conceal this money from his creditors, Barber and Whorton agreed with Knight to have the money wired into Knight's IOLTA account. On November 14, 2008, approximately \$150,000 was transferred by Knight to Epsilon Investments, LLC, and subsequently funneled back to Barber in order to hide said money from Barber's creditors and to use the money for Barber's personal use. None of

these funds were ever disclosed to the bankruptcy court as income on Barber's bankruptcy petition.

g. Based on the nature of the investigation, the review of emails between the co-defendants and others, the review of the various bank accounts of the co-defendants and the statements of cooperating witnesses, the government could prove that the defendant in this case, Brandon Barber, conspired with K. Vaughn Knight and James Van Doren to commit bankruptcy fraud in the Western District of Arkansas.

h. With regard to Indictment 5:12CR50035-001, **COUNT 25**, on or about March 16, 2009, in the Western District of Arkansas, and elsewhere, Brandon Barber, aided and abetted by James Van Doren, engaged in a monetary transaction through a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000. Barber had agreed with Van Doren and Knight to conceal certain income and transactions from creditors as outlined in paragraphs "a-g" above. As part of this scheme and artifice to hide money from and thereby defraud his creditors, Barber directed Knight to wire funds from Knight's IOLTA account to Van Doren's Epsilon, LLC account and Van Doren's personal account and then back to Barber's NWARE account, for Barber's personal use. On March 16, 2009, \$20,000 was wired from a Citibank account in New York in the name of Epsilon Investments, LLC, controlled by Van Doren, to an account at First Security Bank in Fayetteville, Arkansas, in the name of NWARE Investments, LLC, controlled by Barber. Bank records would show that these funds came from the Executive Plaza transaction described in paragraph "f" above. The records and evidence would further show that the specified unlawful activity for this transaction was wire fraud, specifically a wire

transaction in furtherance of the scheme to defraud of \$150,000 from Knight's IOLTA account to the Epsilon Account at Citibank on November 14, 2008. The objective of the transactions was to conceal these funds from Barber's creditors. The banks involved were FDIC insured and the use of the wires in some way or degree affected interstate commerce.

i. With regard to Indictment 5:13CR50004-001, **COUNT 1**, from on or about August 2008 through on or about December 2008, in the Western District of Arkansas and elsewhere, Barber reached an agreement and came to an understanding with Jeff Whorton, Brandon Rains, David Fisher and others, to defraud First Federal Bank, a financial institution, the deposits of which are insured by the FDIC, and to obtain funds under the custody and control of First Federal Bank by means of materially false and fraudulent pretenses, representations, and promises.

j. As part of the conspiracy, Barber, Whorton, Rains, Fisher and an unnamed co-conspirator, and others acting on behalf of themselves, entities owned in whole or in part by them, or on behalf of persons they represented, agreed to and made material false and fraudulent representations to First Federal Bank, intending to defraud First Federal Bank, namely falsely and fraudulently represented the purchase prices of certain lots known as "Executive Plaza" to be higher than the actual sales prices in order to obtain higher loans from First Federal Bank. These false and fraudulent representations were made in connection with a multi-party, multi-property set of real estate transactions involving the Executive Plaza lots. The transactions were structured and closed in such a way that the excess funds and cash could be obtained from the total loan funding advanced by First Federal Bank at closing as a result of the false and fraudulent representations.

k. Barber, Rains, Whorton, Fisher, and an un-named co-conspirator agreed to and did falsely and fraudulently represent to First Federal Bank that the sales prices for the Executive Plaza lots were higher than the actual sales prices and that the loan funds would be used for the purchase of the property rather than for cash out payments from Whorton back to Barber, Rains, and the unnamed co-conspirator. These misrepresentations were falsely and fraudulently made in applying for and obtaining loan funding from First Federal Bank. Further, the misrepresentations were intended to deceive and defraud First Federal Bank into loaning more funds than would have been authorized under the conditions on which First Federal Bank agreed to loan the funds.

l. Specifically, First Federal agreed to loan 100% of the purchase prices of the Executive Plaza lots to Rains and the unnamed co-conspirator along with additional funds for construction costs and other expenses. First Federal did not agree to advance cash to the buyers at or after closing. The fraudulent misrepresentation of the purchase prices provided excess loan funding that was converted to cash and kicked back after closing from Jeff Whorton (the seller of the Executive Plaza lots) to Rains and the unnamed co-conspirator (the buyers of the Executive Plaza lots) and to Barber. These payments were not authorized by First Federal Bank. Rather, First Federal approved the advance of funds necessary to purchase the property, with no cash out to the buyers.

m. The loan from First Federal Bank to the unnamed co-conspirator was in the amount of \$2,750,000, of which the Bank approved \$2,100,000 for the purchase price of lots 7C1, 7D, 7E, 7F and 7G of Executive Plaza and \$650,000 for construction costs and other

expenses. Fisher, on behalf of the unnamed co-conspirator, represented to First Federal that the purchase price was \$2,100,000 when, in fact, it was \$1,550,000.

n. The loan from First Federal Bank to Rains was in the amount of \$1,000,000, of which the Bank approved \$745,000 for the purchase price of lot 7A1 of Executive Plaza and the remainder for construction costs and other costs associated with the property. Rains represented to First Federal Bank that the purchase price was \$745,000 when, in fact, it was \$645,000.

o. Barber and Whorton also negotiated the sale of Barber's house, located at 3122 Township Street, Fayetteville, Arkansas from Barber to Whorton; the sale of Barber's office building located at 2921 S. Old Missouri Road from Barber to Whorton; and the sale of Whorton's house, located at 3250 Willow Bend, Springdale, Arkansas, from Whorton to First Federal Bank.

p. Barber, Rains, Whorton, Fisher, and the unnamed co-conspirator communicated with each other and First Federal Bank in order to convey the details of the transaction, ensure loan funding for all transactions involved, and in order to falsely and fraudulently represent the purchase prices of the Executive Plaza lots to be higher than they actually were to permit the unauthorized and undisclosed cash kickbacks. Barber communicated directly with First Federal Bank concerning aspects of the transactions and, specifically made false and fraudulent misrepresentations regarding the inflated sales prices. Rains, Whorton, and Fisher also made such false and fraudulent misrepresentations.

q. As part of the conspiracy Barber, Whorton, Rains, Fisher and an unnamed co-conspirator agreed that the excess funds would be divided between Barber, Rains, Whorton

and an unnamed co-conspirator. The agreement to divide the excess cash between Whorton, Barber and the unnamed co-conspirator was prepared by Fisher.

r. As part of the conspiracy, Whorton prepared and disbursed checks and wire transfers of the excess funds that were falsely and fraudulently obtained from First Federal Bank, to Barber, Rains and an unnamed co-conspirator, namely \$314,000 to Barber, \$100,000 to Rains and \$550,000 to an unnamed co-conspirator. Barber, Whorton, Rains, Fisher and an unnamed co-conspirator agreed to and did intentionally conceal these cash out payments from the Bank.

s. Barber, Whorton, Rains, Fisher, and an unnamed co-conspirator did not report the lower purchase prices or the cash payments to First Federal Bank, nor did they seek approval for those aspects of the transaction from the Bank. Instead, they agreed to and did fraudulently misrepresent the purchase prices of the Executive Plaza lots to First Federal Bank in order to obtain a total of \$964,000 in unauthorized loan funds from First Federal Bank, which they converted to cash and disbursed, as stated above.

t. Based on the nature of the investigation, the review of emails between the co-defendants and others, the review of the various bank accounts of the co-defendants and the statements of cooperating witnesses, the government could prove that the defendant in this case, Brandon Barber, conspired with Whorton, Rains, Fisher and an unnamed co-conspirator to commit bank fraud in the Western District of Arkansas.

### **ADVICE OF RIGHTS**

7. The defendant hereby acknowledges that he has been advised of and fully understands the following constitutional and statutory rights:

- a. to have an attorney and if the defendant cannot afford an attorney, to have one provided to him and paid for at government expense;
- b. to persist in his plea of not guilty;
- c. to have a speedy and public trial by jury;
- d. to be presumed innocent until proven guilty beyond a reasonable doubt;
- e. to confront and examine witnesses who testify against him;
- f. to call witnesses on his behalf;
- g. to choose to testify or not testify and that no one could force the defendant to testify; and,
- h. to have at least 30 days to prepare for trial.

### **WAIVER OF RIGHTS**

8. The defendant hereby acknowledges that he understands with respect to each count to which he pleads guilty, he thereby WAIVES all of the rights listed as (b) through (h) of the above paragraph.

### **WAIVER OF ACCESS TO RECORDS**

9. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

### **WAIVER OF "HYDE" CLAIM**

10. The defendant hereby waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (Statutory Note), for attorney fees and other litigation expenses arising out of the investigation or prosecution of this matter.

### **EFFECTS OF BREACH OF THIS AGREEMENT BY DEFENDANT**

11. The defendant agrees that if after signing this plea agreement the defendant commits any crimes, violates any conditions of release, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, intentionally incomplete, or intentionally untruthful, or if the defendant violates any term of this plea agreement, takes a position at sentencing which is contrary to the terms of this plea agreement or attempts to withdraw from this plea agreement, this shall constitute a breach of this plea agreement which shall release the United States from any and all restrictions or obligations placed upon it under the terms of this agreement and the United States shall be free to reinstate dismissed charges or pursue additional charges against the defendant. The defendant shall, however, remain bound by the terms of the agreement, and will not be allowed to withdraw this plea of guilty unless permitted to do so by the Court.

12. The defendant further agrees that a breach of any provisions of this plea agreement shall operate as a WAIVER of defendant's rights under Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence and the government shall be allowed to use and to introduce into evidence any one or more of the following:

- a. admissions against interest, both oral and written, made by the defendant to any person;

- b. statements made by the defendant during his change of plea hearing;
- c. the factual basis set forth in the plea agreement;
- d. any testimony given under oath in these proceedings or to a grand jury or a petit jury;
- e. any and all physical evidence of any kind which the defendant has provided to the government; and,
- f. any and all information provided by the defendant to the government's attorneys, or to federal, state, county, and/or local law enforcement officers.

### MAXIMUM PENALTIES

13. The defendant hereby acknowledges that he has been advised of the maximum penalties for each count to which he is pleading guilty. By entering a plea of guilty to Count 13 of the Third Superseding Indictment in 5:12CR50035-001 the defendant agrees that he faces, as to Count 13:

- a. a maximum term of imprisonment for five years;
- b. a maximum fine of \$250,000;
- c. both imprisonment and fine;
- d. a term of supervised release which begins after release from prison;
- e. a possibility of going back to prison if the defendant violates the conditions of supervised release;
- f. a special assessment of \$100.00;
- g. restitution as ordered by the Court.

14. By entering a plea of guilty to Count 25 of the Third Superseding Indictment in 5:12CR50035-001, the defendant agrees that he faces, as to Count 25:

- a. a maximum term of imprisonment for 10 years;

- b. a maximum fine of \$250,000 (or not more than twice the amount of the criminally derived property involved in the transaction);
- c. both imprisonment and fine;
- d. a term of supervised release which begins after release from prison;
- e. a possibility of going back to prison if the defendant violates the conditions of supervised release;
- f. a special assessment of \$100.00;
- g. restitution as ordered by the Court.

15. By entering a plea of guilty to Count 1 of the Superseding Indictment in 5:13CR50004-001 the defendant agrees that he faces, as to Count 1:

- a. a maximum term of imprisonment for 30 years;
- b. a maximum fine of \$1,000,000;
- c. both imprisonment and fine;
- d. a term of supervised release which begins after release from prison;
- e. a possibility of going back to prison if the defendant violates the conditions of supervised release;
- f. a special assessment of \$100.00;
- g. restitution as ordered by the Court.

#### **CONDITIONS OF SUPERVISED RELEASE**

16. The defendant acknowledges that if a term of supervised release is imposed as part of the sentence, the defendant will be subject to the standard conditions of supervised release as recommended by the United States Sentencing Commission and may be subject to other special

conditions of supervised release as determined by the court. The standard conditions of supervised release are as follows:

- a. The defendant shall not leave the judicial district without the permission of the Court or probation officer.
- b. The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer.
- c. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- d. The defendant shall support his or her dependents and meet other family responsibilities.
- e. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons.
- f. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
- g. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
- h. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- i. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer.
- j. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.
- k. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- l. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court, and

m. The defendant shall -- as directed by the probation officer -- notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

### **RESTITUTION**

17. Defendant agrees to pay restitution for the full amount of the victims' losses to all victims of the offense(s) to which defendant is pleading guilty and to all victims of any offense(s) dismissed as a result of this plea. Defendant acknowledges that any restitution imposed is not dischargeable in any bankruptcy proceeding pursuant to 18 U.S.C. 3613(e). The defendant agrees to pay restitution as ordered by the Court in the amount determined by the Court and on conditions determined by the United States Probation Office and/or the Court.

### **AGREEMENT TO PROVIDE FINANCIAL INFORMATION**

18. Defendant agrees that no later than forty-five (45) days before the date set for sentencing, the defendant shall provide to the United States Probation Office a financial disclosure form -- sworn by defendant to be true and correct under penalty of perjury -- listing all his assets and financial interests valued at more than \$1,000. Defendant understands that these assets and financial interests include all assets and financial interests in which defendant has an interest or had an interest prior to the defendant's arrest or Indictment, direct or indirect, whether held in defendant's own name or in the name of another, in any property, real or personal. Defendant shall also identify all assets valued at more than \$5,000 which have been transferred to third parties since the defendant's arrest or Indictment, including the location of the assets and the identity of the third party(ies). For transfers in excess of \$50,000, defendant agrees to identify all such transfers of assets held,

individual or joint, directly or indirectly, which have occurred since the date which is one year prior to the date of the indictment or information.

### **COOPERATION WITH THE GOVERNMENT**

19. The defendant agrees to fully, voluntarily and truthfully cooperate with the United States and disclose all information which the defendant possesses relating to the activities set forth in the indictment and all other information concerning any criminal activity which is the subject of investigation by any law enforcement agency. The defendant's obligation of truthful and unreserved disclosure includes any obligation to provide upon request any documents, records or other tangible evidence within the defendant's control and to waive any privileges that defendant might otherwise assert to the government's use of any documents or other information. The defendant agrees to testify before the grand jury and/or at any trial as requested by the government.

20. The defendant agrees that he will cooperate, in any manner requested, with government agents and prosecutors designated by this office in the conduct of their investigations of others; provided, however, that his own safety is not jeopardized unreasonably. That is, the government agrees that it will not place the defendant in a situation whose danger exceeds that to which an undercover law enforcement officer would be exposed in the normal course of his/her duties.

### **NO OTHER CHARGES**

21. The government agrees that no other federal charges, which stem from the activities described in the Indictment will be brought against the defendant in the Western District of Arkansas.

**SENTENCING GUIDELINES ARE ADVISORY BUT NOT MANDATORY**

22. The parties acknowledge that the Court shall consult and take into account the United States Sentencing Commission Guidelines in determining the sentence, but that the Court is not bound by the Guidelines and may sentence the defendant to any sentence within the statutory range.

**AGREEMENT DOES NOT PROMISE A SPECIFIC SENTENCE**

23. The defendant acknowledges that discussions have taken place concerning the possible guideline range which might be applicable to this case. The defendant agrees that any discussions merely attempt to guess at what appears to be the correct guideline range and do not bind the district court. Further, the defendant acknowledges that the actual range may be greater than contemplated by the parties. In the event that the actual guideline range is greater than the parties expected, the defendant agrees that this does not give him the right to withdraw his plea of guilty.

**RELEVANT CONDUCT CONSIDERED**

24. At the sentencing hearing, the government will be permitted to bring to the Court's attention, and the Court will be permitted to consider, all relevant information with respect to defendant's background, character and conduct, including the conduct that is the subject of this investigation for which he has not been charged up to the date of this agreement, and/or which is the basis for any of the counts which will be dismissed pursuant to this agreement, as provided by § 1B1.3 of the Sentencing Guidelines.

**PERJURY**

25. In the event that it is determined that the defendant has not been truthful with the Court as to any statements made while under oath, this plea agreement shall not be construed to protect the defendant from prosecution for perjury or false statement.

### CONCESSIONS BY THE GOVERNMENT

26. The government agrees to recommend that the defendant be sentenced within the Guideline range as determined by the Court.

27. The government agrees not to object to a recommendation by the probation office or a ruling of the Court which awards the defendant an appropriate-level decrease in the base offense level for acceptance of responsibility. If the offense level in the Presentence Report is 16 or greater and the Court accepts a recommendation in the Presentence Report that defendant receive two points for acceptance of responsibility, the United States agrees to move for an additional one-point reduction for acceptance of responsibility for a total of three points. However, the Government will not be obligated to move for an additional one-point reduction or recommend any adjustment for acceptance of responsibility if defendant engages in conduct inconsistent with acceptance of responsibility including, but not limited to, the following: a) falsely denies, or makes a statement materially inconsistent with, the factual basis set forth in this agreement, b) falsely denies additional relevant conduct in the offense, c) is untruthful with the Government, the Court or probation officer, or d) materially breaches this plea agreement in any way.

28. The government agrees to advise the probation office and the Court of the extent and nature of the defendant's cooperation. The defendant's agreement to cooperate with the government is made pursuant to U.S.S.G. § 1B1.8(a) & (b). If the defendant provides full, complete, truthful, and substantial cooperation to the government, the government reserving the right to make the decision on the nature and extent of the defendant's cooperation, then the government agrees to consider moving for a downward departure under U.S.S.G. § 5K1.1, 18 U.S.C. § 3553(e), or Rule 35 of the Federal Rules of Criminal Procedure. Both parties acknowledge that the district court has

the power to deny a motion for downward departure. The defendant hereby agrees that the government does not promise, by the terms of this agreement, to file a Section 5K1.1, 18 U.S.C. § 3553(e) or Rule 35 motion.

#### **RESERVATION OF RIGHTS**

29. The government and the defendant reserve the right to:
- a. make all facts known to the probation office and to the Court;
  - b. call witnesses and introduce evidence in support of or in opposition to the Presentence Report;
  - c. contest and appeal any finding of fact or application of the Sentencing Guidelines;
  - d. contest and appeal any departure from the appropriate Guideline range; and,
  - e. defend or challenge all rulings of the District Court on appeal including those rulings which may be contrary to recommendations made or positions taken by the parties in this plea agreement.

#### **NO RIGHT TO WITHDRAW THE GUILTY PLEA**

30. The government's concessions on sentencing options are non-binding and made pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure. As a result, if the Court should reject the defendant's requests or recommendations for certain findings of fact or applications of the Guidelines, the defendant acknowledges that there is no right to withdraw the guilty plea.

#### **DISMISSAL OF COUNTS**

31. The government's agreement to dismiss certain counts of the Third Superseding Indictment in Case No. 5:12CR50035-001 is made pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure. As a result, if the Court should reject the government's motion to dismiss the agreed counts of the Third Superseding Indictment in Case No. 5:12CR50035-001, the defendant

shall be afforded the right to withdraw his plea pursuant to Rule 11(c)(5)(B) of the Federal Rules of Criminal Procedure.

**AGREEMENT NOT BINDING ON THE COURT**

32. The parties agree that nothing in this agreement binds the district court to:
- a. make any specific finding of fact;
  - b. make any particular application of the Sentencing Guidelines;
  - c. hand down any specific sentence;
  - d. accept any stipulation of the parties as contained in this plea agreement; and,
  - e. accept this plea agreement.

33. The government and the defendant acknowledge that the Court has an obligation to review the Presentence Report before it accepts or rejects this plea agreement.

**AGREEMENT DOES NOT BIND ANY OTHER ENTITY**

34. The parties agree that this plea agreement does not bind any governmental entity other than the United States Attorney's Office for the Western District of Arkansas.

**SPECIAL ASSESSMENT**

35. The defendant agrees to pay \$300.00 as the special assessment in this case.

**REPRESENTATIONS BY DEFENDANT**

36. By signing this plea agreement, the defendant acknowledges that:
- a. The defendant has read this agreement (or has had this agreement read to him) and has carefully reviewed every part of it with defense counsel.
  - b. The defendant fully understands this plea agreement and is not under the influence of anything that could impede the defendant's ability to fully understand this plea agreement.
  - c. No promises, agreements, understandings, or conditions have been made or entered into in connection with the decision to plead guilty except those set forth in this plea agreement.

d. The defendant is satisfied with the legal services provided by defense counsel in connection with this plea agreement and matters related to it.

e. The defendant has entered into this plea agreement freely, voluntarily, and without reservation and the defendant's desire to enter a plea of guilty is not the result of threats or coercion directed at the defendant or anyone connected with the defendant.

**REPRESENTATIONS BY DEFENSE COUNSEL**

37. By signing this plea agreement, counsel for the defendant acknowledges that:

a. Counsel has carefully reviewed every part of this agreement with the defendant and this agreement accurately and completely sets forth the entire agreement between the United States and the defendant.

b. Counsel has explained the ramifications of the plea agreement to the defendant, and believes that the defendant understands this plea agreement, what rights are being lost by pleading guilty, and what the government has agreed to do in exchange for the plea of guilty.

c. Counsel believes that the defendant's decision to enter into this agreement is an informed and voluntary one.

**PLEA AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT**

38. The defendant and his attorney both acknowledge that this plea agreement constitutes the entire agreement of the parties. Further, all parties agree that there are no oral agreements or promises which have been made to induce the defendant to change his plea to guilty.

Dated this 31<sup>st</sup> day of JULY, 2013.



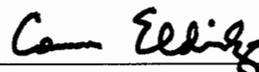
Brandon Lynn Barber  
Defendant

CONNER ELDRIDGE  
UNITED STATES ATTORNEY

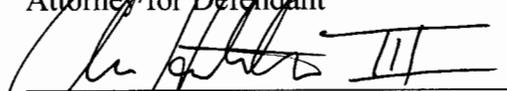


Asa Hutchinson, Sr.  
Attorney for Defendant

By:



Conner Eldridge  
United States Attorney



Asa Hutchinson, III  
Attorney for Defendant