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CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY  DEPUTY CLERK

BENJAMIN B. WAGNER
United States Attorney
RUSSELL L. CARLBERG
Assistant U.S. Attorney
501 I Street, Suite 10-100
Sacramento, California 95814
Telephone: (916) 554-2748

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
ANTHONY G. SYMMES,
Defendant.

CR. NO. 2:10-cr-0200 LKK
PLEA AND COOPERATION AGREEMENT

I.

INTRODUCTION

A. Scope of Agreement: The United States Attorney charged defendant Anthony G. Symmes in an Information with one count of conspiracy to commit mail fraud, in violation of 18 U.S.C. §§ 1341 and 1349, and with one count of conducting a monetary transaction in property derived from specified unlawful activity, in violation of 18 U.S.C. § 1957. This document contains the complete Plea & Cooperation Agreement ("Plea Agreement") between the United States Attorney's Office for the Eastern District of California (the "government") and the defendant. This Plea Agreement is limited to the United States Attorney's Office for the

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Eastern District of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

B. **Court Not a Party:** The Court is not a party to this Plea Agreement. Sentencing is a matter solely within the discretion of the Court, the Court is under no obligation to accept any recommendations made by the government, and the Court may in its discretion impose any sentence it deems appropriate up to and including the statutory maximum stated in this Plea Agreement. If the Court should impose any sentence up to the maximum established by the statute, the defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all of the obligations under this Plea Agreement. The defendant understands that neither the prosecutor, defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will receive.

II.

DEFENDANT'S OBLIGATIONS

A. **Waiver of Indictment and Guilty Plea:** The defendant will waive indictment by grand jury, waive venue, and plead guilty to an Information, substantially in the form attached hereto as Exhibit B, charging him with one count of conspiracy to commit mail fraud, in violation of 18 U.S.C. §§ 1341 and 1349, and one count of conducting a monetary transaction in property derived from specified unlawful activity, in violation of 18 U.S.C. § 1957. The defendant agrees that he is, in fact, guilty of those charges and that the facts set forth in the Factual Basis attached hereto as Exhibit A are true and accurate.

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1 **B. Restitution:** The Mandatory Victim Restitution Act requires
2 the Court to order restitution to the victims of certain offenses.
3 By signing this Agreement, the defendant also agrees to the payment
4 of restitution to the victim(s) of his crime, for up to the full
5 amount of loss caused by the defendant's wrongful conduct. The
6 amount of restitution, if any, will be determined by the Court.
7 Defendant agrees to pay restitution on a schedule to be recommended
8 by the United States Probation Office. Defendant further agrees
9 that he will not seek to discharge any restitution obligation or any
10 part of such obligation in any bankruptcy proceeding.

11 **C. Fine:** In light of the defendant's effort to put substantial
12 resources toward restitution of victims of his offense, the
13 government will not recommend a criminal fine.

14 **D. Special Assessment:** The defendant agrees to pay a special
15 assessment of \$200 at the time of sentencing by delivering a check
16 or money order payable to the United States District Court to the
17 United States Probation Office immediately before the sentencing
18 hearing. The defendant understands that this Plea Agreement is
19 voidable by the government if he fails to pay the assessment prior
20 to that hearing. If the defendant is unable to pay the special
21 assessment at the time of sentencing, he agrees to earn the money to
22 pay the assessment, if necessary by participating in the Inmate
23 Financial Responsibility Program.

24 **E. Agreement to Cooperate:** The defendant agrees to cooperate
25 fully with the government and any other federal, state, or local law
26 enforcement agency, as directed by the government.

27 **1. Meaning of Cooperation:** As used in this Plea
28 Agreement, "cooperation" requires the defendant: (1) to respond

1 truthfully and completely to all questions, whether in interviews,
2 in correspondence, telephone conversations, before a grand jury, or
3 at any trial or other court proceeding; (2) to never falsely
4 inculcate or exculpate anyone; (3) to attend all meetings, grand
5 jury sessions, trials, and other proceedings at which the
6 defendant's presence is requested by the government or compelled by
7 subpoena or court order; (4) to produce voluntarily any and all
8 documents, records, or other tangible evidence requested by the
9 government; (5) not to participate in any criminal activity while
10 cooperating with the government; and (6) to disclose to the
11 government the existence and status of all money, property, or
12 assets, of any kind, including but not limited to those derived from
13 or acquired as a result of, or used to facilitate the commission of,
14 the defendant's illegal activities or the illegal activities of any
15 conspirators.

16 After the defendant pleads guilty, the defendant and his
17 attorney agree that the government and any law enforcement personnel
18 may interview the defendant at any time, provided defense counsel is
19 afforded prior notification and the opportunity to be present at the
20 interview.

21 **2. Consequences of Failure to Cooperate:** If the
22 defendant commits any crimes or if any of the defendant's statements
23 or testimony prove to be knowingly false, misleading, or materially
24 incomplete, or if the defendant otherwise violates this Plea
25 Agreement in any way, the government will no longer be bound by its
26 representations to the defendant concerning the limits on criminal
27 prosecution and sentencing as set forth herein. The determination
28 whether the defendant has violated the Plea Agreement will be under

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1 a probable cause standard.

2 If the defendant violates the Plea Agreement, he shall
3 thereafter be subject to prosecution for any federal criminal
4 violation of which the government has knowledge, including but not
5 limited to perjury, false statements, and obstruction of justice.
6 Because disclosures pursuant to this Plea Agreement will constitute
7 a waiver of the Fifth Amendment privilege against compulsory self-
8 incrimination, any such prosecution may be premised on statements
9 and/or information provided by the defendant. Moreover, any
10 prosecutions that are not time-barred by the applicable statute of
11 limitations as of the date of this Plea Agreement may be commenced
12 in accordance with this paragraph, notwithstanding the expiration of
13 the statute of limitations between the signing of this Plea
14 Agreement and the commencement of any such prosecutions. The
15 defendant agrees to waive all defenses based on the statute of
16 limitations or delay of prosecution with respect to any prosecutions
17 that are not time-barred as of the date of this Plea Agreement.

18 If it is determined that the defendant has violated any
19 provision of this Plea Agreement or if the defendant successfully
20 moves to withdraw his plea: (1) all statements made by the
21 defendant to the government or other designated law enforcement
22 agents, or any testimony given by the defendant before a grand jury
23 or other tribunal, whether before or after this Plea Agreement,
24 shall be admissible in evidence in any criminal, civil, or
25 administrative proceedings hereafter brought against the defendant;
26 and (2) the defendant shall assert no claim under the United States
27 Constitution, any statute, Rule 11(f) of the Federal Rules of
28 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or

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1 any other federal rule, that statements made by the defendant before
2 or after this Plea Agreement, or any leads derived therefrom, should
3 be suppressed. By signing this Plea Agreement, the defendant waives
4 any and all rights in the foregoing respects.

5 **F. Restitution.** The Mandatory Victim Restitution Act requires
6 the Court to order restitution to the victims of certain offenses.
7 The parties have not reached an agreement as to the total amount of
8 restitution required in this and related cases. The defendant has
9 already turned over \$4,000,000 to the government (hereinafter
10 "Restitution Funds"). The defendant represents and warrants that he
11 is the sole owner of the Restitution Funds. The parties agree that,
12 in the event the Court orders restitution, the Restitution Funds
13 already paid by the defendant shall be applied to reduce, or
14 set-off, the defendant's restitution obligation. The defendant
15 agrees to execute any documents the government deems necessary to
16 transfer the Restitution Funds to the Court for distribution as
17 restitution.

18 **G. Forfeiture.** If the court enters an order of Restitution
19 in the amount of \$4,000,000 or greater, the government agrees to
20 forego forfeiture against the defendant. In the event that the
21 Court does not order restitution, or orders restitution in an amount
22 below \$4,000,000, the defendant agrees to entry of a money judgment
23 pursuant to Fed. R. Crim. P. 32.2(b) in the amount of the difference
24 between the restitution ordered and \$4,000,000. The defendant
25 agrees and stipulates that these funds are subject to forfeiture
26 pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), for a
27 violation of 18 U.S.C. §§ 1341 and 1349.

28 The defendant agrees to fully assist the government in the

1 forfeiture of this property and to take whatever steps are necessary
2 to pass clear title to the United States. The defendant agrees not
3 to file a claim to the property in any civil proceeding,
4 administrative or judicial, which may be initiated. The defendant
5 agrees to waive his right to notice of any forfeiture proceeding
6 involving this property, and agrees to not file a claim or assist
7 others in filing a claim in that forfeiture proceeding.

8 The defendant knowingly and voluntarily waives his right to a jury
9 trial on the forfeiture of assets. The defendant knowingly and
10 voluntarily waives all constitutional, legal and equitable defenses
11 to the forfeiture of these assets in any proceeding. The defendant
12 agrees to waive any jeopardy defense, and agrees to waive any claim
13 or defense under the Eighth Amendment to the United States
14 Constitution, including any claim of excessive fine, to the
15 forfeiture of the assets by the United States, the State of
16 California or its subdivisions.

17 The defendant waives oral pronouncement of forfeiture at the
18 time of sentencing, and any defects that may pertain to the
19 forfeiture. The defendant waives personal appearance at any
20 post-sentencing proceeding necessary to effectuate the provisions of
21 this section.

22 The government agrees not to pursue forfeiture in connection
23 with or related to this matter as to defendant Symmes except as
24 specified in this section, and not to seek forfeiture in excess of
25 \$4,000,000 as to defendant Symmes.

26 III.

27 THE GOVERNMENT'S OBLIGATIONS

28 A. Recommendations:

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1 **1. Incarceration Range:** The government will recommend
2 that the defendant be sentenced to the low end of the applicable
3 guideline range for his offense consistent with the stipulations of
4 this Plea Agreement.

5 **2. Acceptance of Responsibility:** If the United States
6 Probation Office determines that a three-level reduction in
7 defendant's offense level for his full and clear demonstration of
8 acceptance of responsibility is appropriate under U.S.S.G. § 3E1.1,
9 the government will not oppose such a reduction and will so move
10 under §3E1.1(b), so long as the defendant pleads guilty, meets with
11 and assists the probation officer in the preparation of the pre-
12 sentence report, is truthful and candid with the probation officer,
13 and does not otherwise engage in conduct that constitutes
14 obstruction of justice within the meaning of U.S.S.G § 3C1.1, either
15 in the preparation of the pre-sentence report or during the
16 sentencing proceeding.

17 **3. Reduction of Sentence for Cooperation:** The government
18 agrees to recommend at the time of sentencing that the defendant's
19 sentence of imprisonment be reduced by up to 50% of the applicable
20 guideline sentence if he provides substantial assistance to the
21 government, pursuant to U.S.S.G. § 5K1.1. The defendant understands
22 that he must comply with paragraph II(E) of this Plea Agreement.
23 The defendant understands that it is within the sole and exclusive
24 discretion of the government to determine whether the defendant has
25 provided substantial assistance. The defendant understands that the
26 government may recommend a reduction in his sentence of less than
27 50% or no reduction at all, depending upon the level of assistance
28 the government determines that the defendant has provided. If the

1 government's recommended reduction pursuant to § 5K1.1 is for a
2 sentence below the statutory mandatory minimum, the government will
3 also move the Court for a reduction below that minimum term, under
4 18 U.S.C. § 3553(e). The defendant further understands that a
5 motion pursuant to U.S.S.G. § 5K1.1 is only a recommendation and is
6 not binding on the Court, that this Plea Agreement confers no right
7 upon the defendant to require that the government make a § 5K1.1
8 motion, and that this Plea Agreement confers no remedy upon the
9 defendant in the event that the government declines to make a
10 § 5K1.1 motion. In particular, the defendant agrees not to try to
11 file a motion to withdraw his plea based on the fact that the
12 government decides not to recommend a sentence reduction or
13 recommends a sentence reduction less than the defendant thinks is
14 appropriate.

15 If the government determines that the defendant has provided
16 further cooperation within one year following his sentencing, the
17 government may move for a further reduction of his sentence under
18 Rule 35 of the Federal Rules of Criminal Procedure.

19 **B. Limitation on Use of Information For Sentencing:** Other
20 than as set forth above, the government agrees that any
21 incriminating information provided by the defendant during his
22 cooperation will not be used in determining the applicable guideline
23 range, pursuant to U.S.S.G. § 1B1.8.

24 **IV.**

25 **ELEMENTS OF THE OFFENSE**

26 **A. Elements of the Offense:** At a trial, the government would
27 have to prove beyond a reasonable doubt the following elements of
28 **conspiracy to commit mail fraud**, to which the defendant is pleading

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1 guilty:

2 (1) beginning on or about August 1, 2006, and continuing to and
3 including approximately on or about July 2, 2008, in the State and
4 Eastern District of California and elsewhere, there was an agreement
5 between two or more persons to commit mail fraud;

6 (2) the defendant became a member of the conspiracy knowing of
7 at least one of its objects and intending to help accomplish it; and

8 (3) one of the members of the conspiracy performed at least one
9 overt act for the purpose of carrying out the conspiracy, with the
10 jury agreeing on a particular overt act.

11 The elements of **mail fraud** are:

12 First, the defendant knowingly participated in:

13 (A) a scheme and artifice to defraud, or

14 (B) in a plan for obtaining money or property by making false
15 promises or statements;

16 Second, the defendant knew that the scheme was misleading or
17 that the promises or statements were false;

18 Third, the scheme, and/or the promises or statements, were
19 material; that is, they had a natural tendency to influence, or were
20 capable of influencing, a person to part with money or property;

21 Fourth, the defendant acted with the intent to defraud; and

22 Fifth, the defendant used, or caused to be used, the mails to
23 carry out or attempt to carry out an essential part of the scheme.

24 A mailing is caused when one knows that the mails will be used
25 in the ordinary course of business or when one can reasonably
26 foresee such use. It does not matter whether the material mailed was
27 itself false or deceptive so long as the mail was used as a part of
28 the scheme, nor does it matter whether the scheme or plan was

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1 successful or that any money or property was obtained.

2 At a trial, the government would also have to prove beyond a
3 reasonable doubt the following elements of **conducting a monetary**
4 **transaction in property derived from specified unlawful activity**, to
5 which the defendant is pleading guilty:

6 First, the defendant knowingly engaged or attempted to engage
7 in a monetary transaction;

8 Second, the defendant knew the transaction involved criminally
9 derived property;

10 Third, the property had a value of greater than \$10,000;

11 Fourth, that the property was, in fact, derived from mail
12 fraud; and

13 Fifth, the transaction occurred in the United States.

14 The term "monetary transaction" means the deposit, withdrawal,
15 transfer or exchange, in or affecting interstate commerce, of funds
16 or a monetary instrument by, through, or to a financial institution.
17 The term "financial institution" means any entity listed in Title
18 31, United States Code, Section 5312(a)(2).

19 V.

20 **MAXIMUM SENTENCE**

21 **A. Maximum Penalty:** For conspiracy to commit mail fraud, the
22 maximum sentence that the Court can impose is twenty years
23 imprisonment, a \$250,000 fine, a three year period of supervised
24 release, and a special assessment of \$100. For **conducting a**
25 **monetary transaction in property derived from specified unlawful**
26 **activity**, the maximum sentence that the Court can impose is ten
27 years imprisonment, a \$250,000 fine (or an alternate amount of
28 double the funds laundered), a three year period of supervised

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1 release, and a special assessment of \$100. By signing this Plea
2 Agreement, the defendant also agrees that the Court can order the
3 payment of restitution for the full loss caused by the defendant's
4 wrongful conduct. The defendant agrees that the restitution order
5 is not restricted to the amounts alleged in the specific counts to
6 which the defendant is pleading guilty. The defendant further
7 agrees that he will not attempt to discharge in any present or
8 future bankruptcy proceeding any restitution imposed by the Court.

9 **B. Violations of Supervised Release:** The defendant understands
10 and agrees that if he violates a condition of supervised release at
11 any time during the term of supervised release, the Court may revoke
12 the term of supervised release and require the defendant to serve up
13 to five additional years imprisonment.

14 **VI.**

15 **SENTENCING DETERMINATION**

16 **A. Statutory Authority:** The defendant understands that the
17 Court must consult the Federal Sentencing Guidelines (as promulgated
18 by the Sentencing Commission pursuant to the Sentencing Reform Act
19 of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as
20 modified by United States v. Booker and United States v. Fanfan,
21 543 U.S. 220, 125 S.Ct. 738 (2005), Rita v. United States, 127 S.Ct.
22 2456 (2007), Gall v. United States, 128 S.Ct. 586 (2007), Kimbrough
23 v. United States, 128 S.Ct. 558 (2007)) and must take them into
24 account when determining a final sentence. The defendant
25 understands that the Court will determine a non-binding and advisory
26 guideline sentencing range for this case pursuant to the Sentencing
27 Guidelines. The defendant further understands that the Court will
28 consider whether there is a basis for departure from the guideline

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1 sentencing range (either above or below the guideline sentencing
2 range) because there exists an aggravating or mitigating
3 circumstance of a kind, or to a degree, not adequately taken into
4 consideration by the Sentencing Commission in formulating the
5 Guidelines. The defendant further understands that the Court, after
6 consultation and consideration of the Sentencing Guidelines, must
7 impose a sentence that is reasonable in light of the factors set
8 forth in 18 U.S.C. § 3553(a).

9 **B. Stipulations Affecting Guidelines Calculation:** The
10 government and the defendant agree that there is no material dispute
11 as to the following sentencing guidelines variables and therefore
12 stipulate to the following:

13 **1. Base Offense Level:** The base offense level is 7, under
14 U.S.S.G. § 2B1.1(a)(1).

15 **2. Loss:** The loss figure foreseeable to defendant Symmes
16 is approximately \$4,955,400, which adds 18 points under
17 §§2B1.1(b)(1)(J), 1B1.3.

18 **3. Number of Victims:** The parties stipulate and agree
19 that the offense involved ten or more victims, so a two-level
20 adjustment applies under U.S.S.G. § 2B1.1(b)(2)(A).

21 **4. Gross Receipts in Excess of \$1,000,000:** Under U.S.S.G.
22 § 2B1.1(b)(14)(A), two levels are added because the defendant
23 derived more than \$1,000,000 in gross receipts from one or more
24 financial institutions as a result of the offense.

25 **5. Money Laundering:** One point is added because the
26 defendant is pleading guilty to conducting a monetary
27 transaction in property derived from specified unlawful
28 activity. See U.S.S.G. § 2S1.1(b)(2)(A).

1 **6. Adjusted Offense Level:** 30.

2 **7. Acceptance of Responsibility:** After acceptance of
3 responsibility (subject to paragraph III(A)(2), above), the
4 offense level is 27.

5 **8. Criminal History:** The parties agree that the
6 defendant's criminal history will be determined by the
7 Probation Officer's score of the defendant's criminal history
8 under Chapter Four of the United States Sentencing Guidelines.

9 **9. Departures:** The parties stipulate and agree that they
10 will not seek or argue in support of any other specific offense
11 characteristics, Chapter Three adjustments (other than the
12 decrease for "Acceptance of Responsibility"), departures, or
13 cross-references, except for those specifically agreed in
14 Paragraphs VI (B)(1)-(8), above, and III(A)(3), also above.

15 **10. Variances or Deviations:** Both parties stipulate and
16 agree not to move for, or argue in support of, any variance or
17 deviance from the Sentencing Guidelines under 18 U.S.C. §
18 3553(a). In the event the defendant or his attorney makes any
19 argument to the United States Probation Office or to the Court
20 for a deviation or variance from the Sentencing Guidelines, or
21 for any other reduction of sentence, the defendant will have
22 materially breached this Plea Agreement. United States v.
23 Salerno, 81 F.3d 1453, 1462 (9th Cir. 1996). In the event of
24 such material breach, the government may elect its remedies.
25 United States v. Cimino, 381 F.3d 124, 128 (2nd Cir. 2004);
26 United States v. Sandoval-Lopez, 122 F.3d 797, 800 (9th
27 Cir.1997) ("Where a defendant has breached a plea agreement,
28 courts have found the government to be free from its

1 obligations.").

2 **VII.**

3 **WAIVERS**

4 **A. Waiver of Constitutional Rights:** The defendant understands
5 that by pleading guilty he is waiving the following constitutional
6 rights:

7 **1. Public and Speedy Trial:** If defendant were to
8 continue with his plea of not guilty to the charges in the
9 indictment, he would be entitled to a public and speedy trial.

10 **2. Jury Trial, Presumption of Innocence, Unanimous**
11 **Verdict:** The defendant has an absolute right to a jury trial. At
12 that trial, the jury would be instructed that the defendant is
13 presumed innocent and that he carries that presumption throughout
14 the trial until such time as the government overcomes the
15 presumption by evidence adduced at the trial. The jury would be
16 further instructed that it could not convict the defendant unless
17 all twelve jurors agreed that the government had proved guilt beyond
18 a reasonable doubt.

19 **3. Confrontation of Witnesses:** At the trial, the
20 defendant would be entitled to see, hear and confront the witnesses
21 and the evidence against him. These witnesses would be testifying
22 under the penalty of perjury and would be subject to
23 cross-examination by the defendant's attorney.

24 **4. Compulsory Process:** At the trial, the defendant would
25 be entitled to present witnesses and other evidence in his own
26 behalf and, if the witnesses refused to appear voluntarily, the
27 defendant would be entitled to use the court's process to compel
28 their attendance.

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1 **5. Privilege Against Self Incrimination:** At a trial, the
2 defendant would have a privilege against self-incrimination so that
3 he could not be compelled to testify and the jury could be
4 instructed that no inference of guilt could be drawn from the
5 defendant's failure to testify.

6 **6. Right to Appeal:** If, after a trial, the defendant
7 were convicted, he would have a right to appeal the conviction.

8 **7. Representation of Counsel:** The defendant is entitled
9 to be represented by competent counsel through all stages of the
10 case, including appeal, and if the defendant could not afford an
11 attorney one would be appointed for him by the court.

12 Defendant understands that by pleading guilty he is waiving all
13 of the rights set forth above. Defendant's attorney has explained
14 those rights to him and the consequences of his waiver of those
15 rights and defendant freely and voluntarily consents to said waiver.

16 **B. Waiver of Appeal and Collateral Attack:** The defendant
17 understands that the law gives him a right to appeal his conviction
18 and sentence. He agrees as part of his plea, however, to give up the
19 right to appeal the conviction. So long as his sentence is no
20 longer than the top of the Sentencing Guidelines range determined by
21 the Court consistent with the stipulations set forth above about the
22 Sentencing Guidelines variables, the defendant also agrees as part
23 of his plea to give up the right to appeal all aspects of the
24 sentence imposed. Defendant specifically gives up his right to
25 appeal any order of restitution the Court may impose.

26 Regardless of the sentence he receives, the defendant also
27 gives up any right he may have to bring a post-appeal attack on his
28 conviction or his sentence. He specifically agrees not to file a

1 motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or
2 sentence.

3 If the defendant ever attempts to vacate his plea, dismiss the
4 underlying charges, or reduce or set aside his sentence on any of
5 the counts to which he is pleading guilty, the government shall have
6 the right (1) to prosecute the defendant on any of the counts to
7 which he pleaded guilty; (2) to reinstate any counts that may be
8 dismissed pursuant to this Plea Agreement; and (3) to file any new
9 charges that would otherwise be barred by this Plea Agreement. The
10 decision to pursue any or all of these options is solely in the
11 discretion of the United States Attorney's Office. By signing this
12 Plea Agreement, the defendant agrees to waive any objections,
13 motions, and defenses he might have to the government's decision.
14 In particular, he agrees not to raise any objections based on the
15 passage of time with respect to such counts including, but not
16 limited to, any statutes of limitation or any objections based on
17 the Speedy Trial Act or the Speedy Trial Clause of the Sixth
18 Amendment.

19 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees
20 to waive all rights under the "Hyde Amendment," Section 617, P.L.
21 105-119 (Nov. 26, 1997), to recover attorneys' fees or other
22 litigation expenses in connection with the investigation and
23 prosecution of all charges in the above-captioned matter and of any
24 related allegations (including without limitation any charges to be
25 dismissed under this Plea Agreement and any charges previously
26 dismissed).

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VIII.

ENTIRE PLEA AGREEMENT

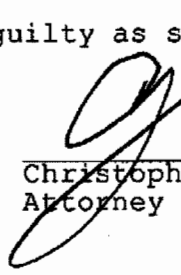
Other than this Plea Agreement, no agreement, understanding, promise, or condition between the government and the defendant exists, nor will such agreement, understanding, promise, or condition exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and counsel for the United States.

IX.

APPROVALS AND SIGNATURES

A. Defense Counsel: I have read this Plea Agreement and have discussed it fully with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this Plea Agreement.

DATED: May 18, 2010


Christopher Wing,
Attorney for Defendant

B. Defendant: I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement. In addition, no one has threatened or forced me in any way to enter into this Plea Agreement. Finally, I am

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1 satisfied with the representation of my attorney in this case.

2

3 DATED: 5-17-10

Anthony G. Symmes,
4 Defendant

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6 C. Attorney for United States: I accept and agree to this
7 Plea Agreement on behalf of the government.

8 DATED: 5-19-10

BENJAMIN B. WAGNER
United States Attorney

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By: Russell L. Carlberg
11 Assistant U.S. Attorney

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1 **EXHIBIT "A"**

2 **Factual Basis for Plea**

3 **I. BACKGROUND**

4 At all relevant times, defendant ANTHONY G. SYMMES ("SYMMES")
5 ran his own construction business and operated land-development
6 corporations called MARIPOSA TRADITIONS, INC, CEANOTHUS TRADITIONS,
7 INC, MARIPOSA VISTA, INC, ROCKIN M, INC, FLORAL ARRANGEMENT, INC,
8 ASPIRE HOMES, INC., and others. SYMMES has been a builder of single
9 family homes in and around Chico, California for 25 years. SYMMES
10 graduated from the University of California, Berkeley in 1973 with a
11 degree in Business Administration. SYMMES is a Certified Public
12 Accountant (passing the CPA exam in 1975). SYMMES graduated from
13 University of Pacific, McGeorge School of Law in 1982 with a Doctor
14 of Jurisprudence. SYMMES passed the BAR exam in 1982 but he is not
15 a practicing lawyer. SYMMES is a California licensed Real Estate
16 Broker as well as a California licensed General Contractor.

17 Beginning in or around August 2006 and continuing through in or
18 around July 2008, SYMMES entered into an ongoing business agreement
19 with an unlicensed real estate and mortgage broker named GARRET
20 GRIFFITH GILILLAND III ("GILILLAND"), who has been indicted in
21 related criminal case no. S-08-135 EJG. GILILLAND partnered with an
22 individual identified here as S.B., the president of NORCAL
23 INNOVATIVE INVESTMENTS (NCII). GILILLAND and S.B. controlled a bank
24 account in the name of NCII at Tri Counties Bank. GILLILAND also
25 owned bank accounts in the names GIG Enterprises, Incorporated and
26 GIII Construction, Incorporated. Individuals identified here as
27 C.M.C., N.F., and B.R. all worked as "lead generators" for NCII
28 before they started their own schemes in imitation of GILILLAND.

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GILILLAND, S.B., C.M.C., N.F., B.R., and others, would recruit straw buyers to purchase new homes from SYMMES's companies. They would offer to pay prices substantially above the asking price on excess inventory that SYMMES had. At close of escrow, SYMMES's development companies would receive payment from lenders who financed the home purchases for the buyers. A day or two later, SYMMES would write a substantial check to one or more companies controlled by GILILLAND and others.

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Altogether, there were approximately sixty-two (62) such transactions with several different "promoters" with attendant, undisclosed payments outside of escrow from SYMMES. Of these sixty-two (62) fraudulent transactions, to date approximately thirty-eight (38) have fallen into foreclosure and ten (10) were short-sold, for a total loss on collateral of approximately \$4,955,400.

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1 **III. MATERIALITY OF THE SCHEME**

2 Regardless of how the scheme is characterized (e.g., cash-back
3 to buyer, payment of undisclosed referral fees to middlemen, or a
4 "double escrow" in which the first purchaser's transaction-a "sale"
5 from SYMMES to GILILAND-is not recorded), the purchase price of the
6 homes was misrepresented to lenders. It was inflated by failing to
7 disclose to the lender that large sums of the purchase price were
8 routed from the seller right back to the buyer and/or buyer's
9 agents. The large rebates from the seller (corporations that SYMMES
10 controlled) were not disclosed on purchase contracts, nor were they
11 disclosed on HUD-1 Settlement Statements. Moreover, they were not
12 disclosed to appraisers of the properties. Large rebates, whether
13 they be called sales concessions, referral fees, cash-back to the
14 buyer, or a "double escrow," are all material to the lending
15 decision. Among other things, they skew the loan-to-value ratio of
16 the property and artificially inflate the price. By inflating the
17 price on so many properties, SYMMES and the co-conspirators were
18 able skew market comparables and more easily obtain inflated
19 appraisals. By selling properties at inflated prices, SYMMES was
20 able to avoid taking losses on his construction loans with Tri
21 Counties Bank. Rather, overpriced homes were shifted to over ten
22 different mortgage lenders, who subsequently suffered losses.

23 **IV. SPECIFIC EXAMPLES OF FRAUD**

24 Two transactions are described below.

25 1. 2640 CEANOTHUS AVENUE, CHICO, CA

26 On June 18, 2007, A.W. purchased the property located at 2640
27 Ceanothus Avenue for \$375,000 from SYMMES. On or about June 18,
28 2007, Affordable Escrow issued check #109077 in the amount of

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1 \$358,450.01 to Ceanothus Traditions, Inc. SYMMES deposited this
2 check into Mariposa Traditions, Inc.'s TCB account ending in #4001.

3 On June 20, 2007, SYMMES issued check #2977 drawn on Mariposa's
4 Tri Counties Bank Account ending in #4001 to GIG Enterprises for
5 \$10,000. On June 20, 2007, SYMMES issued check #2975 drawn on
6 Mariposa's Tri Counties Bank Account ending in #4001 to Diamond Hill
7 Financial for \$46,250. Buyer A.W. was merely a straw buyer who had
8 never even seen the property that he purchased. The house
9 ultimately went into foreclosure and was resold on January 7, 2009
10 at a \$150,000 loss.

11 This transaction caused the Butte County Recorder's office, on
12 or about July 18, 2007, to mail via the U.S. Postal Service a Deed
13 of Trust to Nationwide Title Clearing Company in Palm Harbor, FL.

14 2. 3291 ROCKIN M DRIVE, CHICO, CA

15 On June 19, 2007, GILILLAND'S wife, indicted co-defendant
16 NICOLE MAGPUSAO, purchased the property located at 3291 Rockin M
17 Drive for \$410,000. On or about June 19, 2007, Affordable Escrow
18 issued check #109094 in the amount of \$150,261.12 to Rockin M Inc.
19 SYMMES deposited this check to Mariposa Traditions, Inc.'s TCB
20 account ending in #4001.

21 On June 20, 2007, SYMMES issued check #2976 drawn on Mariposa's
22 Tri Counties Bank Account ending in #4001 to GIII Construction, Inc.
23 for \$52,000. In the memo section of the check SYMMES wrote, "Home
24 improvements." SYMMES has acknowledged no money was used for any
25 home improvements. Rather, this notation was meant to disguise the
26 reduction in sales price. SYMMES was able to pay off \$240,000
27 towards an outstanding construction loan with Tri Counties Bank with
28 the proceeds. The house ultimately went into foreclosure and was

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1 resold on September 2, 2008, at a \$130,000 loss.

2 **V. MONEY LAUNDERING**

3 On numerous occasions during the scheme, Mariposa Traditions,
4 Inc.'s Tri Counties Bank account ending in #4001 received payoff
5 checks from the fraudulent sale of homes through GILILLAND and
6 others. For instance, from the end of March 2007 to early April
7 2007, Mariposa Traditions, Inc.'s bank account received four payoff
8 checks totaling over \$450,000 on the fraudulent sale of the
9 following properties: (1) 2809 Ceanothus Avenue, Chico, CA; (2) 2660
10 Ceanothus Avenue, Chico, CA; (3) 2841 Vistamont Way, Chico, CA; and
11 (4) 1370 Wanderer Lane, Chico, CA.

12 Immediately afterwards, on April 9, 2007, SYMMES wrote check
13 #2823 in the amount of \$17,127.00 to make a monthly car payment on a
14 1955 Aston Martin DB35. Check #2823 was deposited into Susquehanna
15 Patriot Bank. The funds cleared from Tri Counties Bank located in
16 the Eastern District of California. Both Tri Counties Bank and
17 Susquehanna Patriot Bank were federally insured financial
18 institutions at the time of this monetary transaction. Over \$10,000
19 of this monetary transaction was derived from specified unlawful
20 activity, to wit: mail fraud, in violation of Title 18, United
21 States Code, Section 1341.