

I. GUILTY PLEA

A. **Summary of Terms.** Pursuant to Fed. R. Crim. P. 11(c)(1)(B) the defendant, the attorney for the defendant, and the Government¹ agree that the defendant will waive indictment and plead guilty to Counts One and Two of the Information. The defendant acknowledges that the plea is voluntary and did not result from force, threats, or promises, other than any promise made in this Plea Agreement. More specifically, the parties agree as follows:

Count One charges the defendant with Wire Fraud, in violation of 18 U.S.C. Section 1343.

Count Two charges the defendant with Money Laundering, in violation of 18 U.S.C. Section 1957.

B. **Acceptance.** Upon acceptance of the defendant's guilty plea(s), and the defendant's full compliance with the other terms of this Agreement, including the terms of cooperation set forth below, the Government, under Fed. R. Crim. P. 11(c)(1)(B), agrees to make recommendations as noted below. The defendant acknowledges, agrees and waives objection to the fact that the Court may consider "relevant conduct" in arriving at an appropriate sentence pursuant to USSG § 1B1.3.

C. **Oath.** The defendant will be placed under oath at the plea hearing. The Government may use any statement that the defendant makes under oath against the defendant in a prosecution for perjury or false statement.

¹ The word "Government" in this Agreement refers to the United States Attorney for the District of Idaho.

II. WAIVER OF CONSTITUTIONAL RIGHTS AT TRIAL

The defendant understands that by pleading guilty, waives the following rights: 1) the right to plead not guilty to the offense(s) charged against the defendant and to persist in that plea; 2) the right to a trial by jury, at which the defendant would be presumed innocent and the burden would be on the Government to prove the defendant's guilt beyond a reasonable doubt; 3) the right to have the jury agree unanimously that the defendant was guilty of the offense; 4) the right, at trial, to confront and cross-examine adverse witnesses; 5) the right to present evidence and to compel the attendance of witnesses; and 6) the right not to testify or present evidence without having that held against the defendant. If the District Court accepts the defendant's guilty plea, there will be no trial.

III. NATURE OF THE CHARGES

A. **Elements of the Crime.** The elements of the crime of Wire Fraud, as charged in Count One, are as follows:

First, the defendant made up a scheme or plan for obtaining money or property by making false promises or statements, with all of the jury agreeing on at least one particular false promise or statement that was made;

Second, the defendant knew that the promises or statements were false;

Third, the promises or statements were material, that is they would reasonably influence a person to part with money or property;

Fourth, the defendant acted with intent to defraud; and

Fifth, the defendant transmitted or caused to be transmitted, by means of wire in interstate commerce, any writings for the purpose of executing such scheme or artifice, to wit: a

The elements of Money Laundering as charged in Count Two, are as follows:

First, the defendant did knowingly engage and attempt to engage in a monetary transaction;

Second, the monetary transaction was by, through, or to a financial institution, O.C. Tanner, a dealer in precious metals, stones, or jewels;

Third, the transaction consisted of the use of funds contained in the Trigon Group, LLC account, last four digits 0221;

Fourth, the funds were transferred to O.C. Tanner in the amount of \$110,550; and

Fifth, the transaction affected interstate commerce and consisted of criminally derived property of a value greater than \$10,000.00, such property having been derived from a specified unlawful activity, that is; fraud by wire in violation of Title 18, United States Code, Section 1343.

B. Factual Basis. If this matter were to proceed to trial, the Government and the defendant agree that the following facts would be proven beyond a reasonable doubt, which facts accurately represent the defendant's readily provable offense conduct. This factual summary is not intended to detail all relevant conduct, or cover all specific offense characteristics, which will be determined by the Court after its consideration of the Presentence Report.

On or about September 25, 2008, Mr. David Swenson and others operating as Worry Free LLC, of Utah, invested \$500,000 with Daren Palmer's Trigon Group. Daren Palmer sent Mr. Swenson a Powerpoint presentation in an email in September 2008, giving assurances of a very favorable rate of return and safety of the investment. Daren Palmer did not disclose that he

would use the funds to pay other investors, nor did he disclose that his Trigon Group was already in financial trouble. Daren Palmer did not disclose that he intended to use the funds to pay his own personal and business expenses. Mr. Swenson and his other investors would not have invested had they known these facts.

In January, 2009, Mr. Swenson called Daren Palmer to request a quarterly statement. Daren Palmer said there had been problems and hung up. Mr. Swenson later learned all the money was gone. Further, records shows that between 2002 and December, 2008, Daren Palmer received approximately \$75.8 million from sixty-eight investors and that they lost in excess of \$20 million. Mr. Swenson and his three other investors personally lost their \$500,000 investment.

On December 4, 2007, the defendant used funds contained in the Trigon Group LLC bank account at Bank of America, account number 0221, to purchase several items of jewelry for his personal use, from O.C. Tanner, a dealer in precious metals, stones, or jewels, for \$110,550.00. The parties agree that this transfer of funds was a monetary transaction which affected interstate commerce and that it consisted of criminally derived property of a value great than \$10,000, and that the property was derived from a specified unlawful activity, that is, fraud by wire, in violation of 18 U.S.C. Section 1343.

IV. STATUTORY SENTENCING FACTORS PROVISIONS

A. **Maximum Penalties.** A violation of Wire Fraud, as charged in Count One, is punishable by a term of imprisonment of twenty years, a term of supervised release of not more than three years, a maximum fine of \$250,000, and a special assessment of \$100.

A violation of Money Laundering, as charged in Count Two, is punishable by a term of

imprisonment of ten years, a term of supervised release of not more than three years, a maximum fine of \$250,000, and a special assessment of \$100.

B. Supervised Release. Following release from prison, the defendant may be placed on supervised release for not more than three (3) year(s).

The law permits the combined prison time and term of supervised release to exceed the maximum term of incarceration for the crime(s) to which the defendant is pleading guilty.

Violation of any condition of supervised release may result in further penalties and/or prosecution.

C. Fines and Costs. Unless the Court determines that the defendant will not reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. The Court may also order the defendant to pay the costs of imprisonment, probation, and supervised release.

D. Special Assessment. The defendant agrees to pay the special assessment(s) before sentence is imposed, and the defendant will furnish a receipt at sentencing. Payment is to be made to the United States District Court, Clerk's Office, 801 E. Sherman Street, Room 119, Pocatello, Idaho 83201.

E. Restitution. In addition to any fine or costs imposed, the Court pursuant to 18 U.S.C. §§ 2259 or 3663A shall order the defendant to pay restitution equal to the loss caused to any victim(s) of the offense(s) charged in the Information. In addition, the parties agree that the court will order restitution to all victims, charged or uncharged, and that the defendant will not object to such order.

V. UNITED STATES SENTENCING GUIDELINES

A. **Application of Sentencing Guidelines.** The Court must consider the United States Sentencing Guidelines (USSG) in determining an appropriate sentence under 18 U.S.C. § 3553. The defendant agrees that the Court may consider “relevant conduct” in determining a sentence pursuant to USSG § 1B1.3.

The Court is not a party to the Plea Agreement. The Plea Agreement does not bind the Court's determination of Sentencing Guidelines range. The Court will identify the factors that will determine the sentencing range under the Sentencing Guidelines. While the Court may take the defendant's cooperation, if any, and the recommendations of the parties into account, the Court has complete discretion to impose any lawful sentence, including the maximum sentence possible.

Recognizing that the Court is not bound by this Agreement, the parties agree to the recommendations and requests set forth below.

B. **Sentencing Guidelines Recommendations and Requests.**

1. **Acceptance of Responsibility.** If the defendant clearly accepts responsibility for the offense, the defendant will be entitled to a reduction of two levels in the combined adjusted offense level, under USSG § 3E1.1(a). The Government will move for an additional one-level reduction in the combined offense level under § 3E1.1(b) if the following conditions are met: (1) the defendant qualifies for a decrease under § 3E1.1(a); (2) the offense is level 16 or greater; and (3) the defendant has timely notified authorities of the defendant's 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. If, before sentence is imposed, the

defendant fails to meet the criteria set out in USSG § 3E1.1, or acts in a manner inconsistent with acceptance of responsibility, the Government will withdraw or not make such a recommendation.

2. **Amount of Loss.** The parties agree that the loss is at least \$16 million, and the defendant is aware that the government believes it can establish at sentencing that the loss exceeds \$20 million.

VI. COOPERATION

A. **Truthful Information and Assistance.** The defendant promises to provide truthful and complete information to the Government and its investigative agencies, including testimony in legal and administrative proceedings, concerning the defendant's role and the roles of all others involved in offense-related behavior. The defendant shall not attempt to protect anyone through false information or omission. The defendant will not falsely implicate anyone. Any intentional deviation from the truth in any of the defendant's testimony may result in prosecution for perjury and obstruction of justice. The defendant's duty under the terms of this Agreement is to tell the truth whether or not it bolsters the Government's case against any particular individual. The defendant specifically understands that this Agreement is not contingent upon the conviction of any person.

The defendant agrees to cooperate in good faith. This means the defendant will not only respond truthfully and completely to all questions asked, but will also volunteer all information that is reasonably related to subjects discussed. In other words, the defendant may not omit facts about crimes, participants, or defendant's involvement, and then claim not to have breached the Agreement because he was not specifically asked. This Agreement is breached by any action or statement inconsistent with continued cooperation.

The defendant agrees to be available for interviews to prepare for testimony. If necessary, the defendant will submit, upon request, to government-administered polygraph examinations (and provide a personal financial statement, if requested).

The defendant agrees to identify all property related to his crimes. The defendant will identify the extent of any person's or entity's (including defendant's) interest in any such property. The defendant agrees to assist in the recovery and forfeiture of such property to the United States.

B. Use of Information Against Defendant. In exchange for the defendant's agreement, the Government will not use new information the defendant provides (pursuant to this Agreement) about his own criminal conduct. The Government may reveal such information to the Court but it may not be used against the defendant to calculate his sentencing range, to determine a sentence within the guideline range, or to upward depart above the range. There shall be no restrictions, however, on the use of information: 1) previously known to law enforcement agencies; 2) revealed to law enforcement agencies by, or discoverable through, an independent source; or 3) in the event there is a breach of this Agreement.

C. Substantial Assistance Determination. If the Government determines, in good faith, that the defendant's cooperation amounts to "substantial assistance" in the investigation of others, the Government will request that the Court depart downward from the applicable sentencing range, pursuant to USSG § 5K1.1 and/or any mandatory minimum sentence, pursuant to 18 U.S.C. § 3553(e). Any motion for downward departure will be made as a reduction from the applicable guideline range or the mandatory minimum sentence, whichever is greater, consistent with USSG § 5G1.1(b). If the Government determines the defendant has not provided

substantial assistance, the Government will not move for a downward departure.

The Government's final decision whether to file motions pursuant to § 5K1.1 and/or 18 U.S.C. § 3553(e) will be made after evaluating the defendant's cooperation with regards to: 1) the significance and usefulness of the defendant's cooperation, 2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant, 3) the nature and extent of the defendant's assistance, 4) any injury suffered, or any danger or risk of injury to the defendant or defendant's family resulting from the defendant's cooperation, and 5) the timeliness of the defendant's cooperation. The Government's specific recommendation will turn on the facts of the case, the sentence that likely would have been imposed absent an agreement, and the extent and value of the cooperation provided.

D. Defendant's Assumption of Risk. The defendant agrees freely and voluntarily to cooperate with the Government, knowing the possible consequences of cooperation. The defendant's attorney knows of the defendant's cooperation and agrees that the defendant shall enter into this Agreement. The defendant hereby absolves the Government, including its employees, from any liability associated with this cooperation.

VII. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS

A. In exchange for this Agreement, and except as provided in subparagraph B, the defendant waives any right to appeal or to collaterally attack the conviction, entry of judgment, and sentence.

The defendant acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack the defendant might file challenging the plea, conviction or sentence in this case. Further, if the defendant violates this waiver it will be a breach of this Agreement and the

Government may withdraw from this Plea Agreement and take other remedial action.

If the defendant believes the Government has not fulfilled its obligations under this Agreement, the defendant will object at the time of sentencing; further objections are waived.

B. Notwithstanding subparagraph A, the defendant shall retain the right to file one direct appeal only if one of the following unusual circumstances occur; the defendant understands that these circumstances occur rarely and that in most cases this Agreement constitutes a complete waiver of all appellate rights:

1. the sentence imposed by the District Court exceeds the statutory maximum;
2. the District Court arrived at an advisory Sentencing Guidelines range by applying an upward departure under Chapter 5K of the Guidelines; or
3. the District Court exercised its discretion under 18 U.S.C. § 3553(a) to impose a sentence that exceeds the advisory Sentencing Guidelines range as determined by the District Court.

Notwithstanding subparagraph A, the defendant shall retain the right to file one habeas petition (motion under 28 U.S.C. § 2255) only if the defendant believes that the defendant received ineffective assistance of counsel based solely on information not known to the defendant at the time the District Court imposed sentence and which, in the exercise of reasonable diligence, could not have been known by the defendant at that time.

VIII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT

The defendant agrees to provide material financial and other information requested by a representative of the United States Probation Office for use in preparing a presentence report.

Failure to execute releases and provide such information violates this Agreement. Such failure will subject the defendant to additional penalties, including an enhancement under USSG § 3C1.1, or an upward departure under § 5K2.0, and relieve the Government of the obligations in this Agreement. Such failure will not, however, constitute grounds for withdrawing the plea of guilty unless the Government so requests.

IX. NO RIGHT TO WITHDRAW PLEA

The defendant understands that the Court may not follow the recommendations or requests made by the parties at the time of sentencing. The defendant cannot withdraw from this Plea Agreement or the guilty plea, regardless of the Court's actions.

X. CONSEQUENCES OF VIOLATING AGREEMENT

A. **Government's Options.** If the defendant fails to keep any promise in this Agreement or commits a new crime, the Government is relieved of any obligation not to prosecute the defendant on other charges, including charges not pursued due to this Plea Agreement. Such charges may be brought without prior notice. In addition, if the Government determines after sentence is imposed that the defendant's breach of the Agreement warrants further prosecution, the Government may choose between letting the conviction(s) under this Plea Agreement stand or vacating such conviction(s) so that such charge(s) may be re-prosecuted. If the Government determines that a breach warrants prosecution before sentencing, it may withdraw from the Plea Agreement in its entirety.

B. **Defendant's Waiver of Rights.** If the defendant fails to keep any promise made in this Agreement, the defendant gives up the right not to be placed twice in jeopardy for the offense(s) to which the defendant entered a plea of guilty or which were dismissed under this

Agreement. In addition, for any charge that is brought as a result of the defendant's failure to keep this Agreement, the defendant gives up: (1) any right under the Constitution and laws of the United States to be charged or tried in a more speedy manner; and (2) the right to be charged within the applicable statute of limitations period if the statute of limitations expired after the defendant entered into this Agreement.

Furthermore, if the defendant does not enter an acceptable plea, the Government will move to continue the trial now set to allow the Government adequate time to prepare. The defendant agrees not to contest such a continuance, and agrees that the resulting delay would be excludable time under 18 U.S.C. § 3161(h)(1)(I), (h)(3)(A), or (h)(8)(A).

XI. MISCELLANEOUS

A. No Other Terms. This Agreement is the complete understanding between the parties, and no other promises have been made by the Government to the defendant or to the attorney for the defendant. This Agreement does not prevent any governmental agency from pursuing civil or administrative actions against the defendant or any property. Unless an exception to this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or obligate governmental entities other than the United States Attorney's Office for the District of Idaho. The Government will bring the defendant's cooperation and pleas to the attention of other prosecuting authorities at the defendant's or defendant's counsel's request.

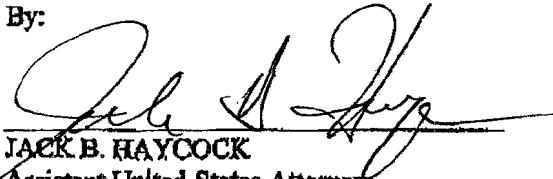
B. Plea Agreement Acceptance Deadline. This plea offer is explicitly conditioned on the defendant's notification of acceptance of this Plea Agreement no later than 5:00 p.m. on May 20, 2011.

XII. UNITED STATES' APPROVAL

I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States that the terms and conditions set forth above are appropriate and are in the best interests of justice.

WENDY J. OLSON
UNITED STATES ATTORNEY

By:



JACK B. HAYCOCK
Assistant United States Attorney

Date

5/24/11

XII. ACCEPTANCE BY DEFENDANT AND COUNSEL

I have read and carefully reviewed every part of this Plea Agreement with my attorney. I understand the Agreement and its effect upon my potential sentence. Furthermore, I have discussed all of my rights with my attorney and I understand those rights. No other promises or inducements have been made to me, directly or indirectly, by any agent of the Government, including any Assistant United States Attorney, concerning the plea to be entered in this case. In addition, no one has threatened or coerced me to do, or to refrain from doing, anything in connection with this case, including to enter a guilty plea. I am satisfied with my attorney's advice and representation in this case.



DAREN PALMER
Defendant

Date

5-24-11

I have read this Plea Agreement and have discussed the contents of the Agreement with my client. The Plea Agreement accurately sets forth the entirety of the Agreement. I concur in my client's decision to plead guilty as set forth above.



STEVEN V. RICHERT
Attorney for the Defendant

5/25/11

Date