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**FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH**
AUG 21 2013
D. MARK JONES, CLERK
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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA, : Case No. 2:11-cr-00985-RJS-PMW
 :
 Plaintiff, :
 :
 v. : **STATEMENT BY DEFENDANT IN**
 : **ADVANCE OF PLEA OF GUILTY**
 :
 ROBERT J. ANDRES, : Judge Robert J. Shelby
 : Magistrate Judge Paul M. Warner
 Defendant. :

I hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights, and that I have had the assistance of counsel in reviewing, explaining, and completing this form:

1. As part of this Agreement with the United States, I intend to plead guilty to Count One the Indictment (wire fraud). My attorney has explained the nature of the charge against me, and I have had an opportunity to discuss the nature of the charge with my attorney. I understand the charge and what the government is required to prove in order to convict me. The elements of Count One, Wire Fraud (18 U.S.C. § 1343) are:

- First, the defendant engaged in a scheme or artifice to defraud;
- Second, the defendant used interstate wire communication to facilitate that scheme, and;
- Third, a purpose to use the wire communication to execute the scheme

2. (a) I know that the maximum possible penalty provided by law for Count One of the Indictment, a violation of 18 U.S.C. § 1343, is a term of imprisonment of up to 20 years, a fine of \$250,000, and a term of supervised release of up to three years. I understand that if the supervised release term is violated, I can be returned to prison for the length of time provided in 18 U.S.C. § 3583(e)(3).

(b) Additionally, I know the court is required to impose an assessment in the amount of \$100 for each offense of conviction, pursuant to 18 U.S.C. § 3013. Furthermore, restitution to the victim of my offense shall be ordered pursuant to 18 U.S.C. § 3663A.

(c) If I am not a U.S. citizen, I understand that my guilty plea may carry a risk of adverse immigration consequences and have fully discussed those consequences with my lawyer.

3. I know that the sentencing procedures in this case and the ultimate sentence will be determined pursuant to 18 U.S.C. § 3553(a), and that the Court must consider, but is not bound by, the United States Sentencing Guidelines, in determining my sentence. I have discussed these procedures with my attorney. I also know that the final calculation of my sentence by the Court may differ from any calculation the United States, my attorney, or I may have made, and I will not be able to withdraw my plea if this occurs.

4. I know that I can be represented by an attorney at every stage of the proceeding, and I know that if I cannot afford an attorney, one will be appointed to represent me.

5. I know that I have a right to plead "Not Guilty," and I know that if I do plead "Not Guilty," I can have a trial.

6. I know that I have a right to a trial by jury, and I know that if I stand trial by a jury:

- (a) I have a right to the assistance of counsel at every stage of the proceeding.
- (b) I have a right to see and observe the witnesses who testify against me.
- (c) My attorney can cross-examine all witnesses who testify against me.
- (d) I can call witnesses to testify at trial, and I can obtain subpoenas to require

the attendance and testimony of those witnesses. If I cannot afford to pay for the appearance of a witness and mileage fees, the government will pay them.

- (e) I cannot be forced to incriminate myself, and I do not have to testify at any trial.
- (f) If I do not want to testify, the jury will be told that no inference adverse to me may be drawn from my election not to testify.
- (g) The government must prove each and every element of the offense charged against me beyond a reasonable doubt.
- (h) It requires a unanimous verdict of a jury to convict me.
- (i) If I were to be convicted, I could appeal, and if I could not afford to appeal, the government would pay the costs of the appeal, including the services of appointed counsel.

7. If I plead guilty, I will not have a trial of any kind.

8. I know that 18 U.S.C. § 3742(a) sets forth the circumstances under which I may appeal my sentence. However, fully understanding my right to appeal my sentence, and in consideration of the concessions and/or commitments made by the United States in this plea agreement, I knowingly, voluntarily, and expressly waive my right to appeal as set forth in Paragraph 12 below.

9. I know that 18 U.S.C. § 3742(d) otherwise sets for the circumstances under which the United States may appeal my sentence.

10. I know that under a plea of guilty the judge may ask me questions under oath about the offense. The questions, if asked on the record and in the presence of counsel, must be answered truthfully and, if I give false answers, I can be prosecuted for perjury.

11. I stipulate and agree that the following facts accurately describe my conduct. These facts provide a basis for the Court to accept my guilty plea and for calculating the sentence in my case:

Beginning in or around October 2005 and continuing through January 2011, in the Central District of Utah and elsewhere, I operated an entity called the Winsome Investment Trust ("Winsome"), with its principal place of business in Houston, Texas. I fraudulently obtained millions of dollars from investors by (1) misrepresenting the assets and asset allocation of Winsome and (2) misrepresenting the types of investments into which I would place investors' funds.

Between approximately October 2005 until at least April 2007, I recruited investors to invest in a trading operation (“the “Trading Firm”). In soliciting some investors, I (1) disseminated purported Winsome “balance sheets” that falsely represented that Winsome had approximately \$2.6 billion in total assets and falsely represented the nature and allocation of these assets and (2) falsely represented to investors and potential investors that I would invest all of their funds in a “trading program” or “mostly automated trading business.” Contrary to my representations, I diverted more than \$850,000 of investor funds in this time period for personal uses and approximately \$1.2 million to unauthorized investments and investment schemes.

Between approximately April 2007 until at least January 2011, I continued to recruit investors to Winsome. In soliciting investors, I (1) disseminated purported Winsome “balance sheets” that falsely represented that Winsome had approximately \$2.6 billion in total assets and falsely represented the nature and allocation of these assets; (2) falsely represented to investors and potential investors that I would invest their funds in “mostly automated trading utilizing past experiences which have been successful.”; and (3) failed to disclose that new investors’ funds would be partially used to make distributions to Pre-April 2007 Winsome investors.

During this time period, I distributed “profits” to Pre-April 2007 Winsome investors that were actually proceeds from new Winsome investors. In addition, contrary to my representations, I used investors’ funds for purposes not disclosed to the investors and potential investors of Winsome, including diverting approximately \$2.2 million for personal uses.

I agree that the total gain resulting from my actions was approximately \$3,291,310.39.

12. The only terms and conditions pertaining to this plea agreement between the defendant and the United States are as follows:

A. The defendant agrees:

- (1) I will plead guilty to Count 1 of the Indictment.
- (2)(a) Fully understanding my limited right to appeal my sentence, as referenced above in Paragraph 8, and in consideration of the concessions and/or commitments made by the United States in this plea agreement, I knowingly, voluntarily, and expressly waive my right to appeal any sentence imposed upon me, and the manner in which the sentence is determined, on any of the grounds set forth in 18 U.S.C. § 3742 or on any ground whatever, except I do not waive my right to appeal (1) a sentence above the maximum penalty provided in the statute of conviction as set forth in

Paragraph 2 above; and (2) a sentence above the high-end of the guideline range as determined by the district court at sentencing, or, in the event that no such determination is made by the district court, a sentence above the high-end of the guideline range as set forth in the final presentence report;

- (2)(b) I also knowingly, voluntarily, and expressly waive my right to challenge my sentence, and the manner in which the sentence is determined, in any collateral review motion, writ, or other procedure, including, but not limited to, a motion brought under 28 U.S.C. § 2255;
- (2)(c) I understand that this waiver of my appeal and collateral review rights concerning my sentence shall not affect the government's right to appeal my sentence pursuant to 18 U.S.C. § 3742(b). However, I understand that the United States agrees that if it appeals my sentence, I am released from my waiver;
- (2)(d) I further understand and agree that the word "sentence" appearing throughout this waiver provision is being used broadly and applies to all aspects of the Court's sentencing authority, including, but not limited to, (1) sentencing determinations; (2) the imposition of imprisonment, fines, supervised release, probation, and any specific terms and conditions thereof, and (3) any orders of restitution;
- (3) If the Court finds that I failed to fulfill my obligations under this plea agreement, or if I withdraw my plea of guilty, I shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that my statements pursuant to this agreement, or any leads derived therefrom, should be suppressed or are inadmissible at any trial, hearing, or other proceeding;
- (4) To prepare my Pre-Sentence Report, I acknowledge that the United States Probation Office will ask me to complete the "Probation 48 Financial Packet" and to provide supporting documentation for the representations I make therein. I agree to truthfully and accurately complete the "Probation 48 Financial Packet" and to provide a copy of it and all supporting documentation attached thereto to the United States Probation Office and to the United States Attorney's Office within **three weeks** of my change of plea. I also consent to

allowing the United States Attorney's Office to run a credit check on me. I understand that providing false or incomplete information or refusing to provide this information may be used as a basis for (1) a separate prosecution under 18 U.S.C. § 1001; (2) the denial of a reduction for acceptance of responsibility pursuant to Sentencing Guideline § 3E1.1; and/or (3) an enhancement of my sentence for obstruction of justice under Sentencing Guideline § 3C1.1;

- (5) I understand and agree that the Presentence Report may include descriptions of conduct I engaged in which either was not charged against me, will not be pleaded to be me, or both. I understand and agree that the Court will take these facts into consideration in sentencing me, that my sentence may be increased because of these facts, and that if the Court determines restitution is applicable to me, the restitution order in the case will include restitution to victims of unpled conduct. I understand and agree unless I object to these facts in the Presentence Report, they will be deemed admitted by me.
- (6)(a) I agree that, pursuant to the provisions of 18 U.S.C. § 3663A(a)(1) and (c)(1), I am obligated to make restitution, and the court is obligated to order that I pay it. I understand that the amount of restitution will be no greater than \$3,291,310.39.
- (6)(b) I understand that the amount of restitution and the schedule of payments will be determined as a part of the sentencing proceedings in accordance with the provisions of 18 U.S.C. § 3664, and that under 18 U.S.C. § 3664(h), the Court can make me liable for the full amount of restitution owed. I agree to pay all restitution as ordered by the Court. I understand the payment of restitution is governed by 18 U.S.C. § 3664, and my lawyer has explained the consequences of an order of restitution.
- (6)(c) I understand that the government will recommend, and I agree that the Court should order, that during incarceration my restitution will be payable on a schedule of the greater of \$10.00 every three months or 50% of my income in prison from both institution and other sources. I agree to pay restitution during any period of incarceration imposed on me.
- (6)(d) I understand and agree that my payment of any restitution owed, pursuant to the schedule set by the Court at sentencing, should be a condition of any term of probation or supervised release imposed

upon me. I know that if I fail to pay restitution as ordered, the failure can be considered a violation of probation or supervised release and, pursuant to 18 U.S.C. § 3614, the court can resentence me to any sentence which might originally have been imposed in my case.

- (7) To help me meet my obligations to pay restitution and/or a fine, I consent to being placed on the Treasury Offset Program and State Finder.

FORFEITURE JUDGMENT

- (8)(a) I agree to forfeit all interests in any asset that is related to my offense of conviction that I currently own or over which I exercise control, directly or indirectly, including any property I have transferred, and any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of my offense, including, but not limited to, a money forfeiture judgment for the total amount of restitution ordered in this case.
- (8)(b) I further agree to waive all interest in any such asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. I agree to consent to the entry of orders of forfeiture for such property and waive the requirements of Federal Rules of Criminal Procedure 32.3 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. I acknowledge I understand that the forfeiture of assets is part of the sentence that may be imposed in this case and waive any failure by the court to advise me of this, pursuant to Rule 11(b)(1)(J), at the time this guilty plea is accepted.
- (8)(c) I further agree to waive all constitutional and statutory challenges in any many (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. I acknowledge that all property covered by this agreement is subject to forfeiture as property involved in illegal conduct giving rise to forfeiture.

B. The United States agrees:

- (1)(a) To recommend that the defendant's offense level under the U.S. Sentencing Guidelines be decreased by two levels for acceptance of responsibility pursuant to Sentencing Guideline § 3E1.1(a) if, in the opinion of the United States, the defendant clearly demonstrates acceptance of responsibility for ~~her~~ offense, up to and including at the time of sentencing, as set forth in § 3E1.1 of the Sentencing Guidelines; and
- (1)(b) To move for an addition one-level reduction in the defendant's offense level, in accordance with Sentencing Guideline § 3E1.1(b), if the defendant qualifies for a two-level reduction under § 3E1.1(a) and the defendant's offense level is 16 or greater prior to receiving the two-level reduction;
- (2) To recommend at sentencing that the defendant be sentenced at the low-end of the range in the Sentencing Guidelines. This recommendation shall be limited to the defendant's term of imprisonment and shall apply to no other aspect of sentencing. The United States' agreement is based on the present facts and circumstances, and if the facts change, the United States shall not be bound by this provision.
- (3) To recommend that the Court waive interest for fines and restitution assessed against the defendant.
- (4) The government makes no recommendation as to any other sentencing provisions except those specifically enumerated in Sections 12(B) and 12 (C) (e.g., supervised release, assessments, etc.). The Court may impose them in accordance with applicable law.

RM
TBWH

C. The United States and the defendant agree that the following provisions of the Sentencing Guidelines apply to this case. The United States and the defendant agree not to advocate for the application of any other provision of the Sentencing Guidelines during the sentencing proceedings:

- (1) Base offense level: 7 (U.S.S.G. § 2B1.1(a)(1))
- (2) Amount of gain: +18 (U.S.S.G. § 2B1.1(b)(1)(J))
- (3) Number of victims: +4 (U.S.S.G. § 2B1.1(b)(2)(B))

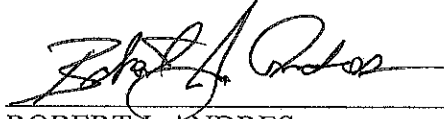
(4) Pre-Adjustment Offense Level: 29

* * * * *

I make the following representations to the Court:

1. I am 62 years of age. My education includes completing college and law school. I can read and understand English.
2. This Statement in Advance contains all terms of the agreements between me and the government; if there are exceptions, the Court will be specifically advised, on the record, at the time of my guilty plea of the additional terms and those provisions will be made a part of this agreement. I understand the government and I cannot have terms of this plea that are not disclosed to the Court.
3. Neither my attorney nor the government has represented to me that I would receive probation or any other form of leniency because of my plea.
4. I have discussed this case and this plea with my lawyer as much as I wish, and I have no additional questions.
5. I am satisfied with my lawyer.
6. My decision to enter this plea was made after full and careful thought; with the advice of counsel; and with a full understanding of my rights, the facts and circumstances of the case and the consequences of the plea. I was not under the influence of any drugs, medication, or intoxicants when I made the decision to enter the plea, and I am not now under the influence of any drugs, medication, or intoxicants.
7. I have no mental reservations concerning the plea.
8. I understand and agree to all of the above. I know that I am free to change or delete anything contained in this statement. I do not wish to make changes to this agreement because I agree with the terms and all of the statements are correct.

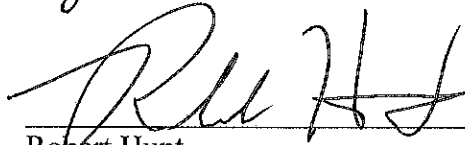
DATED this 21st day of Aug, 2013.



ROBERT J. ANDRES
Defendant

I certify that all terms of the plea agreement between the defendant and the government have disclosed to the Court, and that there is a legal and factual basis for the defendant's plea of guilty.

DATED this 21st day of Aug, 2013.



Robert Hunt
Attorney for Defendant

I certify that all terms of the plea agreement between the defendant and the government have been disclosed to the Court, and that there is a legal and factual basis for the defendant's plea of guilty.

DATED this 21st day of August, 2013.

JEFFREY H. KNOX
Chief, Fraud Section



Thomas B.W. Hall
Trial Attorney

DAVID B. BARLOW
United States Attorney



Jason R. Burt
Assistant United States Attorney