

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

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BY MARK JONES, CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.


WAYNE LEMAR PALMER,

Defendant.

Case No. 2:15-cr-00469-CW

STATEMENT BY DEFENDANT IN
ADVANCE OF PLEA OF GUILTY
AND PLEA AGREEMENT PURSUANT
TO FED. R. CRIM. P. 11(c)(1)(C)

Judge Clark Waddoups

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 entering into this agreement:

1. As part of this agreement with the United States, I intend to plead guilty to Counts 1 and 33 of the Indictment. My attorney has explained the nature of the charges against me, and I have had an opportunity to discuss the nature of the charges with my attorney. I understand the charges and what the government is required to prove in order to convict me.

The elements of Count 1, in violation of 18 U.S.C. § 1343, Wire Fraud, are:

First, the defendant devised a scheme and artifice to defraud or a scheme to obtain money by means of false pretenses, representations, or promises as alleged in the Indictment;

Second, the defendant knowingly and willfully participated in the scheme and artifice to defraud with knowledge of its fraudulent nature and with specific intent to defraud;

Third, in execution or furtherance of that scheme, the defendant caused the use of interstate wire transmissions as specified in the Indictment; and

Fourth, the scheme employed false or fraudulent pretenses, representations, or promises that were material.

The elements of Count 33, in violation of 18 U.S.C. § 1957, Money Laundering, are:

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

Second, that monetary transaction involved criminally derived property at a value greater than \$10,000;

Third, the defendant knew that property was derived from unlawful activity; and

Fourth, that property was, in fact, derived from specified unlawful activity - - i.e., wire fraud.

2. I know that the maximum possible penalty provided by law for count 1 of the Indictment, a violation of 18 U.S.C. § 1343 (Wire Fraud), is a term of imprisonment of 20 years, a fine of \$250,000, a term of supervised release of 36 months, and any applicable forfeiture. I understand that if I violate a term or condition of supervised release, I can be returned to prison for the length of time provided in 18 U.S.C. § 3583(e)(3).

I also know that the maximum possible penalty provided by law for count 33 of the Indictment, a violation of 18 U.S.C. § 1957 (Money Laundering), is a term of imprisonment of 10 years, a fine of \$250,000, and a term of supervised release of 36 months. I understand that if I violate a term or condition of supervised release, I can be returned to prison for the length of time provided in 18 U.S.C. § 3583(e)(3).

a. 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.

b. I understand that, if I am not a United States citizen, I may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

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. However, because my plea of guilty is being entered pursuant to Rule 11(c)(1)(C), as explained below, I know that I will be able to withdraw my plea if the Court does not accept the terms of this agreement.

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" or maintain my earlier plea of "Not Guilty" and can have a trial on the charges against me.

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(c)(1) 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, under 18 U.S.C. § 3742(c)(2), the United States may only appeal my sentence if it is less than the sentence set forth in this agreement.

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:

From around 2009 through June 2012, acting through my company National Note of Utah and affiliated entities (collectively, "NNU"), I solicited investors to invest in NNU's business of loaning funds to real estate based companies. As part of my solicitations to investors, I falsely represented that their investment in NNU was safe and guaranteed, and that NNU was profitable and generated sufficient income from its business operations to pay investors a 12% per annum return. As further part of those solicitations, I failed to inform investors that NNU and affiliated entities, in the aggregate, had insufficient operating revenues to pay investors and operating expenses. I also failed to inform investors that new investor funds were being used, in part, to pay prior investors' return of principal and interest payments. These misrepresentations and omissions were material to investors and their decision to invest with NNU and I accepted investor money under those circumstances.

Count 1

On or about April 6, 2011, and in execution of the scheme alleged in the Indictment, investor D.M. wire transferred \$330,000 from his M.E.I. account at First Interstate Bank of Billing in Wyoming, account number XXXXX1683, to NNU's account at J.P. Morgan Chase Bank in Utah, account number XXXXX3907.

Count 33

On or about April 7, 2011, drawing from the proceeds of the scheme alleged in the Indictment, which proceeds were derived from unlawful activity, I caused check number 5411 to be drawn on NNU J.P. Morgan Chase Bank account XXXXX3907 in the amount of \$290,000 to be deposited in NNU Wells Fargo Bank account XXXXX5954.

The above acts occurred in the District of Utah and elsewhere.

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

- a. **Guilty Plea.** I will plead guilty to Counts 1 and 33 of the Indictment.
- b. **Dismissal of Counts.** I understand the United States will dismiss all remaining counts of the Indictment at the time of sentencing.
- c. **Stipulated Sentence.** Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the sentence imposed by the Court will be within a range of 0 to 120 months, which I agree is a reasonable sentence.

(1) I understand that this agreement, including my plea, the agreed upon sentence, and all other terms referenced herein, are subject to the approval of, and acceptance by the Court. I further understand that the Court may order the preparation of a Presentence Report to assist in the determination of whether this plea and the agreement are appropriate, and I agree to fully cooperate in the preparation of the Presentence Report.

(2) If, after receiving all relevant information, the Court rejects the plea agreement and determines that a sentence outside of the agreed upon sentencing range of 0 to 120 months will be imposed, I will have the right to withdraw the plea of guilty and the terms of this agreement will become null and void.

d. **Forfeiture.** I agree to forfeit all property acquired from or proceeds traceable to the entirety of my scheme to defraud. I also agree to forfeit all property involved in my money laundering offense including a forfeiture money judgment concurrent with the forfeiture money judgment for my scheme to defraud in the amount of \$290,000. To the extent that payments are made to satisfy the money judgment for the entire scheme, those payments will also serve to satisfy the money judgment for the money laundering offense.

(1) I acknowledge and agree that the proper measure of forfeiture for my plea to wire fraud is the amount I obtained from the entire scheme to defraud and not just the amount from the single instance of fraud alleged in Count 1 to which I am pleading. I acknowledge that the exact amount of the forfeiture money judgment for property I acquired from or proceeds traceable to my entire scheme to defraud is unknown at this time. I agree to the court entering a general order of forfeiture prior to sentencing as provided for in Fed. R. Crim. P. 32.2(b)(2)(C) so that the government and I can accurately calculate the forfeiture money judgment amount. I agree to cooperate with the

government by providing it any documentation or other evidence relevant to determining the amount as soon as possible. Once a forfeiture money judgment amount is calculated, I understand that the government will move to amend the general forfeiture order and that I will have the right to challenge the amount before the court. Should I intend to rely on 18 U.S.C. § 981(a)(2)(B), I will provide the government with all documentation and supporting evidence for “direct costs” as soon as practicable, but at least 30 days before any hearing to determine the forfeiture money judgment amount.

(2) I acknowledge that all property covered by this agreement is subject to forfeiture because it represents the proceeds of illegal conduct, helped facilitate illegal conduct, or was involved in money laundering.

(3) I agree that all such property may be forfeited in either an administrative or judicial proceeding. I agree that I will not make a claim to the property in any such proceeding, and I will not help anyone else do so. If I have already made such a claim, I hereby withdraw it. I further agree that I will sign any necessary documents to ensure that clear title to the forfeited assets passes to the United States, and that I will testify truthfully in any judicial forfeiture proceeding.

(4) I hereby waive any claims I may have against the United States regarding the seizure and forfeiture of the property covered by this agreement.

(5) I hereby waive the requirements of Fed. R. Crim. P. 32.2 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.

(6) I understand that forfeiture is part of my sentence. I hereby waive the requirements of Fed. R. Crim. P. 11(b)(1)(J) regarding the Court’s obligation to tell me this at the time this guilty plea is accepted.

(7) I hereby waive any constitutional or statutory challenges to the forfeiture covered by this agreement, including that the forfeiture is an excessive fine or punishment.

e. **Relevant Conduct.** 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 by me, or both. I understand and agree that the Court will take these facts into consideration in determining the reasonableness of the stipulated

sentence. I also understand and agree that the facts describing my conduct in paragraph 11 do not limit the Court in its determination of relevant conduct in this case.

f. Appeal Waiver.

(1) Fully understanding my limited right to appeal my sentence, as explained 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, except that I do not waive the right to appeal as set forth in 18 U.S.C. § 3742(c)(1), which states that I may not file a notice of appeal unless the sentence imposed is greater than the sentence set forth in this agreement.

(2) I also knowingly, voluntarily, and expressly waive my right to challenge my sentence, unless the sentence imposed is greater than the sentence set forth in this agreement, in any collateral review motion, writ or other procedure, including but not limited to a motion brought under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

(3) 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(c)(2), (b)(1), and (b)(2).

(4) 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.

g. Restitution.

(1) I understand that the total 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. 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. I also agree to a minimum monthly restitution payment of \$500 while on supervised release, subject to adjustment as may be determined by the United States Probation Office.

(2) I understand and agree that payment of any restitution owed, pursuant to the schedule set by the Court at sentencing, should be a condition of my 36 months on supervised release. I know that if I fail to pay restitution as ordered, the failure can be considered a violation of 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.

13. I understand and agree that this plea agreement is solely between me and the United States Attorney for the District of Utah and does not bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

14. I understand that I have a right to ask the Court any questions I wish to ask concerning my rights about these proceedings and the plea.

* * * *

I make the following representations to the Court:

1. I am 61 years of age. My education consists of High School Diploma 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. I understand the government and I cannot have terms of this plea agreements that are not disclosed to the Court.

3. No one has made threats, promises, or representations to me that have caused me to plead guilty, other than the provisions set forth in this agreement.

4. Neither my attorney nor the government has promised me that I would receive probation or any other form of leniency because of my plea.

5. I have discussed this case and this plea with my lawyer as much as I wish, and I have no additional questions.

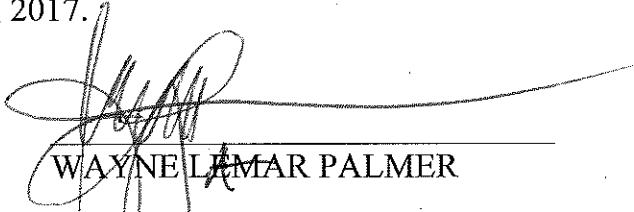
6. I am satisfied with my lawyer.

7. 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.

8. I have no mental reservations concerning the plea.


9. 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 February, 2017.


WAYNE LAMAR PALMER

I certify that I have discussed this plea agreement with the defendant, that I have fully explained his rights to him, and that I have assisted him in completing this written agreement. I believe that he is knowingly and voluntarily entering the plea with full knowledge of his legal rights and that there is a factual basis for the plea.

DATED this 21st day of February, 2017.


ROBERT K. HUNT
JAMIE ZENGER
Attorneys for Defendant

I represent that all terms of the plea agreement between the defendant and the government have been, or will be at the plea hearing, disclosed to the Court, and there are no undisclosed agreements between the defendant and the United States.

DATED this 21st day of February, 2017.

JOHN H. HUBER
United States Attorney


MARK Y. HIRATA
AMANDA A. BERNDT
Assistant United States Attorneys