

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION

**FILED**

MAY 28 2009

CLERK OF THE COURT  
U.S. DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
URBANA, ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT J. FITTS,

Defendant.

CRIMINAL NO. CR08-20031

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(A) & (B) of the Federal Rules of Criminal Procedure, the United States of America by Roger A. Heaton, United States Attorney for the Central District of Illinois, and Eugene L. Miller, Assistant United States Attorney, and the defendant, Scott J. Fitts, personally and by his attorney, Jeffrey B. Steinback, have agreed upon the following:

SCOPE

1. This document contains the complete and only plea agreement between the United States Attorney for the Central District of Illinois and the defendant. This agreement supersedes and replaces any and all prior formal and informal, written and oral, express and implied, plea agreements between the parties. No other agreement, understanding, promise, or condition between the United States Attorney for the Central District of Illinois and the defendant exists, except as set forth in this plea agreement.

2. This plea agreement is binding only upon the United States Attorney for the Central District of Illinois and the defendant. It does not bind any United States Attorney outside the Central District of Illinois, nor does it bind any state or local prosecutor. In addition, the plea agreement does not bind the Tax Division of the United States Department of Justice or the Internal Revenue Service of the United States Department of the Treasury.

### THE PLEA

3. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the defendant will enter a plea of guilty to Counts 1, 8, and 9 of the ten count indictment in this cause. Count 1 of the indictment charges the defendant with Wire Fraud in violation of Title 18, United States Code, Sections 1343 and 1346. Count 8 of the indictment charges the defendant with Filing a False Individual Income Tax Return in violation of Title 26, United States Code, Section 7206(1). Count 9 of the indictment charges the defendant with Structuring Financial Transactions in violation of Title 31, United States Code, Section 5324. Pursuant to Rule 11(c)(1)(B), if the Court does not accept the recommendations of the parties as set forth below, the defendant understands that he does not have the right to withdraw his plea of guilty.

4. The United States agrees to move to dismiss Counts 2, 3, 4, and 5, which charge the defendant with additional counts of Wire Fraud, Count 6, which charges the defendant with False Statement, Count 7, which charges the defendant with Obstruction of Justice, and Count 10, which charges the defendant with Structuring

Financial Transactions, at the time of sentencing. The defendant acknowledges that the counts that the United States agrees to dismiss were brought in good faith and not for any vexatious or frivolous reason on the part of the United States.

#### ELEMENTS OF THE CHARGES

5. The defendant has personally read the indictment and the charges to which the defendant is pleading guilty. The indictment and the charges have been explained to the defendant by the defendant's attorney. Furthermore, the defendant fully understands the nature and elements of the crimes to which the defendant is pleading guilty.

6. The offense of Wire Fraud in violation of Title 18, United States Code, Section 1343 has the following elements, each of which the prosecution must prove beyond a reasonable doubt:

- a. First, that the defendant knowingly devised a scheme to defraud or to obtain money by means of false pretenses, representations, or promises;
- b. Second, that the defendant did so knowingly and with the intent to defraud; and
- c. Third, that for the purpose of carrying out the scheme or attempting to do so, the defendant caused interstate wire communications to take place in the manner charged in the particular count.

7. A scheme is a plan or course of action formed with the intent to accomplish some purpose. A scheme to defraud is a scheme that is intended to deceive another and to obtain money or property or cause the potential loss of money or

property to another.

8. The term "knowingly" means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake, or accident.

9. The phrase "scheme or artifice to defraud" includes a scheme to deprive another of the intangible right of honest services.

10. The phrase "intent to defraud" means that the acts charged were done knowingly with the intent to deceive the victim in order to cause a gain of money or property to the defendant or the potential loss of money or property to another.

11. The wire fraud statute can be violated whether or not there is any loss or damage to the victim of the crime or gain to the defendant. Exposing the victim to a substantial risk of loss of which the victim is unaware satisfies the intent requirement of wire fraud, even if the defendant sincerely intended to repay the victim.

12. The government must prove that interstate communication facilities were used to carry out the scheme or were incidental to an essential part of the scheme. In order to cause interstate wire communications to take place, the defendant need not actually intend that use to take place. The government must prove that the defendant knew this use would actually occur, or that the defendant knew that it would occur in the ordinary course of business, or that the defendant knew facts from which that use could reasonably have been foreseen. However, the government does not have to prove that the defendant knew that the wire communication was of an interstate nature.

The defendant need not actually or personally use the interstate communication facilities. Although an item communicated interstate need not itself contain a fraudulent representation or promise or a request for money, it must further or attempt to further the scheme. Each separate use of interstate communication facilities in furtherance of the scheme to defraud constitutes a separate offense.

13. The offense of Filing a False Individual Income Tax Return in violation of Title 26, United States Code, Section 7206(1) has the following elements, each of which the prosecution must prove beyond a reasonable doubt:

- a. First, that the defendant caused to be made the income tax return;
- b. Second, that the defendant signed the income tax return, which contained written declaration that it was made under penalties of perjury;
- c. Third, that the defendant caused the income tax return to be filed with the Internal Revenue Service;
- d. Fourth, the income tax return was false as to a material matter, as charged in the count; and
- e. Fifth, when the defendant made and signed the tax return, the defendant did so willfully and did not believe that the tax return was true, correct, and complete as to every material matter.

14. The term "willfully" means the voluntary and intentional violation of a known legal duty or the purposeful omission to do what the law requires. The defendant acted willfully if he knew it was his legal duty to file truthful individual tax returns and intentionally filed a false return.

15. If the defendant willfully understated the amount of gross income on his

individual tax return and the amount of gross income was essential to a correct computation of the amount of taxable income or tax, the false and fraudulent statements were false as to a material matter.

16. The offense of Structuring Financial Transactions in violation of Title 31, United States Code, Section 5324 has the following elements, each of which the prosecution must prove beyond a reasonable doubt:

- a. First, that the defendant structured or attempted to structure a transaction for the purpose of evading the currency transaction reporting requirements; and
- b. Second, that the transaction involved one or more domestic financial institutions.

17. A defendant may be guilty of unlawfully structuring a transaction whether or not the financial institution filed, or failed to file, a true and accurate currency transaction report.

18. The term "currency transaction" means the physical transfer of currency from one person to another.

19. The term "structure" refers to the manner in which a transaction was carried out. Structuring occurs when a person acting alone or with or on behalf of others conducts or attempts to conduct one or more currency transactions at one or more financial institutions or different branches of the same financial institution, on one or more days, with the purpose of evading currency transaction reporting requirements in any manner. Structuring includes breaking down a single sum of currency over

\$10,000 into smaller sums, or conducting a series of cash transactions all at or below \$10,000, with the purpose of evading currency transaction reporting requirements.

20. Any person who knowingly aids the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

21. Additionally, a defendant is subject to increased penalties for the offense of Structuring Financial Transactions in violation of Title 31, United States Code, Section 5324 if the prosecution proves beyond a reasonable doubt that the defendant committed the offense while violating other laws of the United States and as part of a pattern of illegal activity involving more than \$100,000 in a twelve month period.

#### POTENTIAL PENALTIES

22. The charge of Wire Fraud in violation of Title 18, United States Code, Sections 1343 and 1346, a Class C felony, has the following potential penalties:

- a. Maximum twenty year period of imprisonment;
- b. Maximum \$250,000 fine; and
- c. Maximum three year period of supervised release.

23. The charge of Filing a False Individual Income Tax Return in violation of Title 26, United States Code, Section 7206(1), a Class E felony, has the following potential penalties:

- a. Maximum three year period of imprisonment;
- b. Maximum \$100,000 fine, plus the costs of prosecution; and

- c. Maximum one year period of supervised release.

24. The charge of Structuring Financial Transactions in violation of Title 31, United States Code, Section 5324(a)(3) and (d)(2) is a Class C felony and has the following potential penalties if the defendant committed the offense while violating other laws of the United States and as part of a pattern of illegal activity involving more than \$100,000 in a twelve month period commencing on January 1, 2006:

- a. Maximum ten year period of imprisonment;
- b. Maximum \$500,000 fine; and
- c. Maximum three year period of supervised release.

25. The defendant further understands and agrees to pay the mandatory \$100 Special Assessment for each of the three counts of the Indictment (a total of \$300) to which the defendant is entering a Plea of Guilty as required under Title 18, United States Code, Section 3013. The defendant agrees to pay this mandatory special assessment at the time of sentencing by delivering a check or money order made payable to the United States District Court and understands that he will be required to do so as a condition of this Plea Agreement. No failure to comply with this requirement, however, will constitute grounds for the defendant to withdraw any plea of guilty.

26. The defendant further understands that upon violation of any of the terms of the defendant's supervised release, the supervised release may be revoked and the defendant may be imprisoned for all or part of the supervised release period without



credit for time previously served.

27. The defendant understands and agrees that the Court may be required to order the defendant to pay restitution. Restitution may include the cost of incarceration and supervision. The parties acknowledge that the Court may order restitution in whatever amount it deems proper.

#### ACCEPTANCE OF RESPONSIBILITY

28. The United States agrees, based upon the facts currently known by the United States, that the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct in accordance with § 3E1.1 of the United States Sentencing Guidelines and, therefore, a two-level reduction in the offense level is appropriate. Acceptance of personal responsibility shall include cooperating fully with the United States Probation Office in the preparation of a presentence report and not committing any bond violations while on pretrial release, including but not limited to the commission of any local, state, or federal offenses. This agreement does not preclude the United States from changing its position if new evidence to the contrary is discovered or if the defendant later demonstrates a lack of acceptance of personal responsibility in the opinion of the United States.

29. The United States agrees to move at sentencing for an additional one-level reduction in offense level if the defendant's offense level is 16 or greater because the defendant assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby

permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

30. The defendant understands that the Court will not be bound under this agreement by the positions of either party and will be free to make its own independent determination concerning the defendant's acceptance of responsibility. An objection to the Court's ruling will not give the defendant any right to withdraw his guilty plea.

COOPERATION BY THE DEFENDANT

31. As a condition of this entire Plea Agreement, the defendant will cooperate fully with law enforcement officials as set forth in a cooperation agreement dated November 10, 2008 and attached hereto as Exhibit A. All information and testimony given by the defendant must at all times be complete and truthful. This means, for instance, that he must neither minimize his own actions nor fabricate or exaggerate anyone else's actions or involvement. The defendant's status does not hinge upon obtaining a conviction against anyone else; it is dependent solely upon his being truthful about the facts whatever those may be.

32. The defendant agrees that if he violates the terms of the cooperation agreement, the United States will be completely released from all of its obligations under this Plea Agreement. The defendant agrees, however, that under such a circumstance he will not be allowed to withdraw from any previously accepted guilty plea.

33. The United States agrees that at the time of sentencing it will fully inform

the Court of the nature, extent, and value of any cooperation rendered by the defendant.

34. The United States reserves the right, in its sole discretion, to make a motion at the time of sentencing for a downward deviation from the sentencing guideline range pursuant to United States Sentencing Guidelines Section 5K1.1 if the defendant provides substantial assistance in the investigation or prosecution of other criminal offenses. If the defendant provides substantial assistance in the investigation or prosecution of other criminal offenses, but the defendant's cooperation is not complete at the time of sentencing, the United States reserves the right, in its sole discretion, to refrain from making a motion pursuant to U.S.S.G. § 5K1.1 at the sentencing and instead to make a motion, after the defendant's cooperation is complete, for a downward deviation from the sentencing guideline range pursuant to Federal Rule of Criminal Procedure 35(b). The defendant understands that it is the policy of the United States to make a motion under either U.S.S.G. § 5K1.1 or Federal Rule of Criminal Procedure 35(b), but not both. The extent of any such recommended deviation will depend solely upon the United States' evaluation of the nature, extent, and value of the defendant's assistance, including the defendant's truthfulness.

35. The defendant and his attorney acknowledge that they have reviewed, and the defendant understands, the possible application of United States Sentencing Guidelines Section 5K1.1. They further acknowledge, consistent with Application Note 3 to that Section, that the United States is in the best position to assess the value of

the defendant's cooperation to the United States and its law enforcement efforts. In return for receiving the opportunity to cooperate with the government and for the opportunity to be considered by the government for a motion and recommendation for a downward deviation pursuant to U.S.S.G. § 5K1.1, the defendant and his attorney agree to limit any argument regarding the extent of a downward deviation for substantial assistance to only those grounds specifically set forth in § 5K1.1.

### ADVISORY SENTENCING GUIDELINES

36. The defendant understands that the Court will calculate the defendant's offense level and criminal history category under the United States Sentencing Guidelines, and that the Court will use those calculations to arrive at an advisory sentencing range under the Guidelines. The defendant understands that the Court must consider the advisory Sentencing Guideline range when imposing sentence. The Court shall also consider the other factors listed under Title 18, United States Code, Section 3553(a) in determining the specific sentence to be imposed. The defendant understands that although the Sentencing Guidelines are advisory, the Court may choose to impose sentence in accordance with the Sentencing Guidelines.

37. The United States and the defendant agree to recommend that the following provisions of the Sentencing Guidelines do or do not apply, as set forth:

- a. The defendant's base offense level is 7 pursuant to §2B1.1(a)(1);
- b. The defendant's offense level should be increased by 12 levels because the loss in the case is more than \$200,000, but not more than \$400,000

pursuant to §2B1.1(b)(1)(G);

c. The defendant's offense level should be increased by two levels because the defendant abused a position of public trust that significantly facilitated the commission and concealment of the offense pursuant to §3B1.3;

d. As fully set forth above in paragraphs 28, 29, and 30, based on the information the parties currently possess, the defendant's offense level should be reduced by three levels pursuant to §3E1.1(a) and (b) because he has accepted responsibility for his conduct;

e. No adjustment for vulnerable victim applies pursuant to §3A1.1(b);  
and

f. The defendant understands that pursuant to Rule 11(c)(1)(B) the parties' recommendations or requests do not bind the Court, and at the time of sentencing, the Court may accept or reject any agreements herein regarding the application of the Sentencing Guidelines.

38. The United States and the defendant at this time have not reached an agreement as to the application of §2B1.1(b)(2) (number of victims) and §2B1.1(b)(9)(C) (sophisticated means) of the Sentencing Guidelines.

#### SENTENCING RECOMMENDATIONS AND THEIR EFFECT UPON THE COURT

39. Both the United States and the defendant remain free to recommend whatever sentence each party, respectively, deems appropriate.

40. The defendant agrees that at the time of sentencing, the Court will not be

bound by any recommendation made by any party, and that the Court will be free to impose whatever sentence it deems appropriate up to the statutory maximum.

41. The defendant agrees and understands that he will not be allowed to withdraw his guilty plea because of an objection to the calculation of the advisory Sentencing Guidelines or to the Court's sentencing findings or rulings or because the defendant receives a sentence higher than that recommended under the plea agreement.

#### STIPULATION OF FACTS

42. The defendant will plead guilty because he is in fact guilty. In pleading guilty, the defendant stipulates and agrees that the United States could prove the following to a jury beyond a reasonable doubt:

The Grant Park Police Department (hereinafter, "GPPD") was located in the Village of Grant Park (hereinafter, "Grant Park"), Kankakee County, in the Central District of Illinois. The GPPD was entrusted with, among other things, fairly and impartially enforcing the laws of the State of Illinois, as well as the ordinances of Kankakee County, Illinois, and Grant Park. The Chief of Police of the GPPD (hereinafter, "Chief of Police"), appointed by the Grant Park Village Board, was responsible, among other things, for running the GPPD. The defendant, Scott J. Fitts (hereinafter, "FITTS") was appointed as Chief of Police around December of 1994 and served continuously as the Chief of Police, up to and including May of 2008. The defendant, by virtue of his position as the Chief of Police, owed a duty of honest services to the citizens of Grant Park, Illinois, to Grant Park itself, and to persons

arrested by the GPPD in the performance of his public duties.

Solicitation of Prostitution Stings

In November 2005, while acting as the Chief of Police of the GPPD, the defendant also was employed as a Special Agent with the United States Department of Labor. On or about November 15, 2005, related to his employment as a Special Agent with the Department of Labor, the defendant was involved in the arrest of "Brooke" in Chicago, Illinois, on allegations of prostitution. As part of a scheme to defraud, the defendant induced "Brooke" to assist the GPPD by posing as a prostitute to lure individuals to be arrested by the GPPD for solicitation of prostitution. The defendant paid "Brooke" for her assistance approximately \$38,242.

The defendant paid for "Brooke" to travel from her Texas residence to Kankakee County, Illinois, on five separate occasions: January 13 and 14, 2006, March 2 to 4, 2006, April 27 to 29, 2006, June 8 to 10, 2006, and July 31 to August 4, 2006. Prior to and during these dates, and pursuant to the defendant's instruction, "Brooke" advertised on an internet website that she would be in the South Suburbs of Chicago or Manteno, Illinois on those dates, posted photographs of herself, listed an in-call rate of \$300 per hour, and provided a contact telephone number and e-mail address. The internet advertisement for "Brooke" was located on the computer servers of Darkside Productions, Inc. in California and was viewed by individuals on computers in other states by means of interstate wire communication. For example, Individual A, who was later arrested during the stings, viewed the internet advertisement for "Brooke" on a

computer located in Bourbonnais, Kankakee County, in the Central District of Illinois on January 14, 2006.

The defendant chose the motel in Manteno, Illinois where the stings were conducted. When individuals contacted "Brooke," she discussed a price for her services and arranged to meet the individuals at a specific date and time at the motel in Manteno. The defendant enlisted the assistance of other members of the GPPD, who were paid by Grant Park, in conducting the stings. The defendant falsely informed the other officers that the stings were joint federal, state, and local investigations. In fact, no federal agencies were involved in the stings, nor was the defendant acting within the scope of his employment as a federal employee in conducting the stings.

During the stings, "Brooke" posed as a prostitute and met with individuals at a motel in Manteno, Kankakee County, in the Central District of Illinois. "Brooke" instructed the individuals to take a shower, and when they did, the defendant and/or other officers arrested the individuals. The defendant and other officers seized the cash the individuals brought for the prostitute (typically \$300), as well as any other cash the individuals had in their possession. Following their arrest, the individuals were transported by officers from Manteno, Illinois approximately 10 miles to the Grant Park police station in Grant Park, Kankakee County, in the Central District of Illinois. Another officer drove the individuals' vehicles from Manteno to Grant Park.

In Grant Park, the individuals met with the defendant and other officers. The individuals were generally required to post a \$100 cash bond to be released from



custody, as well as a \$500 cash bond for their vehicle to be released. On occasions, an officer would drive the individual to a bank or ATM to obtain the cash bond. The cash seized by the officers and the cash posted as bond by the individuals was forwarded to the defendant.

At the GPPD, the individuals were informed that they had been arrested for solicitation of prostitution. Despite being arrested in Manteno, many individuals were informed that they could be prosecuted by the Village of Grant Park Attorney. The individuals were informed that their name and address might be placed in the newspaper, on the internet, or on the GPPD's website in conjunction with their arrest. Many of the individuals were also falsely informed that it was a joint federal, state, and local investigation and that "Brooke" was actually an undercover federal agent.

The defendant offered the individuals what he termed a "Plea Agreement" if they paid a "fine" (typically \$3,500) and waived any right to the money that had already been seized from them. The defendant informed them that in exchange for the payment their case would be dismissed, no prosecution would occur, and the individual's name would not be disclosed to the media or posted on any police department's website. Most of the individuals provided the defendant with the \$3,500 payment, often in cash, to avoid public disclosure of their arrest. Yet, those few individuals who refused to pay the "fine" were never charged with any state or local offense. In fact, no charges were ever filed against any individual as a result of the stings, nor were any of the arrests reported to any other law enforcement agency or

otherwise made public by the defendant.

Approximately 100 individuals were arrested during the stings. Approximately \$50,657 in cash was seized from the individuals, the individuals posted approximately \$40,450 in bond money, and the individuals paid approximately \$309,612 in fines; thus, approximately \$400,719 was obtained by the GPPD as a result of the stings. Almost all of these proceeds, including the cash, was forwarded to the defendant as Chief of Police.

As part of the scheme, only \$175,958.34 was accounted for by the records of the GPPD: According to those records, \$33,382 was forwarded by the defendant to accounts under the control of the Village of Grant Park (\$25,677 to the Grant Park Public Safety account and \$7,705 to the Grant Park Truck Enforcement Credit Card account); \$52,400 was placed in the Grant Park Police Association Account, an account under the control of the defendant; \$38,242 was paid to "Brooke" by the defendant; \$13,000.24 was forwarded to the Manteno Police Department by the defendant for its assistance with the stings; and \$38,934.10 was reportedly retained in cash in a cardboard box inside the GPPD vault, which was under the control of the defendant.

The defendant defrauded the people of Grant Park, the individuals arrested during the solicitation of prostitution stings, and Grant Park of their intangible right to his honest services by obtaining and diverting payments received from the individuals of approximately \$224,760.66 for his own personal, private, and financial benefit. From February 14, 2006 to September 7, 2006, during the same time frame as the stings and as

part of the scheme, the defendant made cash deposits into his personal bank accounts, cash payments on personal loans, cash payments at a casino, and a cash payment to a landscaping company totaling approximately \$198,107.08. For example, the defendant structured the deposit of \$19,100 United States currency into his account with Homestar Bank, a domestic financial institution located in the Central District of Illinois, by depositing \$9,600 United States currency on May 30, 2006 and depositing \$9,500 United States currency on May 31, 2006, for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a) and regulations prescribed thereunder.

#### Payroll Checks

It was further part of the scheme to defraud that from at least June 2005 to at least October 2007, the defendant diverted Grant Park funds by submitting payroll records reflecting that certain officers worked certain hours for the GPPD on certain days, whereas, in fact, as the defendant well knew, those officers did not work those hours. The defendant obtained the GPPD payroll checks generated by his fraudulent payroll record submissions, cashed those checks, and used some of the proceeds for his own personal, private, and financial benefit. The defendant defrauded Grant Park of over \$20,000 through the fraudulent payroll checks.

#### 2006 Individual Income Tax Return

On April 15, 2007, the defendant was a resident of Manteno, Kankakee County, in the Central District of Illinois. The defendant made a United States Individual Tax Return (Form 1040 with schedules and attachments) for the calendar year 2006, which

return the defendant verified by a written declaration that the return was made under the penalties of perjury. The defendant filed the income tax return with the Internal Revenue Service. In the return, the defendant listed his total income as \$146,244, willfully omitting the income he had received from the solicitation of prostitution stings and fraudulent payroll checks. Thus, when the defendant made and signed the tax return, he knew it was not true, correct, and complete as to his total income, which amount was capable of influencing the correct computation of the amount of the defendant's tax liability.

#### FORFEITURE

43. The defendant stipulates and agrees to the entry of a money judgment of forfeiture against him and in favor of the United States in the amount of \$224,760.66, that being the total amount of net proceeds involved in or traceable to the foregoing offenses for which the government is seeking forfeiture. The defendant further agrees that the government is entitled to the forfeiture of substitute assets for property otherwise subject to forfeiture in satisfaction of said money judgment. The defendant agrees to assist the government in satisfying the money judgment, and in that regard agrees to the following:

a. The defendant agrees to prepare a complete and truthful financial statement under oath, on a form provided by the United States Attorney's Office and to return the statement to the United States Attorney's Office within two weeks of submitting this signed plea agreement;

b. The defendant agrees to forfeit all interest in assets that the defendant currently owns, has previously owned or over which the

defendant currently, or has in the past, exercised control, directly or indirectly, and any property the defendant has transferred, as well as any property that is traceable to or derived from property that constitutes the proceeds of his offense; and

c. The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding.

44. The defendant further agrees to waive all interest in any assets in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 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. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

45. The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, collateral attack, 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. Defendant acknowledges that all property covered by this agreement is subject to forfeiture as either proceeds of illegal conduct or substitute assets for property otherwise subject to forfeiture, including but not limited to the defendant's equity in his personal residence in Manteno, Illinois.

WAIVER OF RIGHT OF APPEAL FROM CONVICTION AND SENTENCE

46. The defendant is aware that federal law, specifically, Title 28, United States Code, Section 1291, affords a defendant a right to appeal a final decision of the district court and that federal law, specifically, Title 18, United States Code, Section 3742, affords a defendant a right to appeal the conviction and/or sentence imposed. Understanding those rights, and having thoroughly discussed those rights with the defendant's attorney, the defendant knowingly and voluntarily waives the right to appeal any and all issues relating to this Plea Agreement and conviction and to the sentence, including any fine or restitution, within the maximum provided in the statutes of conviction, and the manner in which the sentence, including any fine or restitution, was determined, on any ground whatever, in exchange for the concessions made by the United States in this Plea Agreement.

WAIVER OF RIGHT TO COLLATERAL ATTACK

47. The defendant also understands that he has a right to attack his sentence collaterally on the grounds it was imposed in violation of the Constitution or laws of the United States, he received ineffective assistance from his attorney, this Court was without proper jurisdiction or the sentence was otherwise subject to collateral attack. The defendant understands such an attack is usually brought through a motion pursuant to Title 28, United States Code, Section 2255. The defendant and his attorney have reviewed Section 2255, and the defendant understands the rights that statute gives him. The defendant's attorney has fully discussed and explained this waiver with the

defendant. The defendant specifically acknowledges that the decision to waive the right to challenge any later claim of the ineffectiveness of the defendant's counsel was made by the defendant alone notwithstanding any advice the defendant may or may not have received from the defendant's attorney regarding this right. Regardless of any advice his attorney has given him one way or the other, in exchange for the concessions made by the United States in this Plea Agreement, including an agreement to be sentenced to the minimum sentence as set forth above, the defendant hereby knowingly and voluntarily waives his right to challenge any and all issues relating to his Plea Agreement, conviction and sentence, including any fine or restitution, in any collateral attack, including, but not limited to, a motion brought under Title 28, United States Code, Section 2255. The defendant acknowledges and agrees that the effect of this waiver is to completely waive any and all rights and ability to appeal or collaterally attack any issues relating to his conviction and to his sentence so long as the defendant is sentenced as set forth in this Plea Agreement.

ACKNOWLEDGMENT OF VOLUNTARINESS OF WAIVER

48. The defendant states that he has not been coerced, threatened, intimidated, or in any other way involuntarily persuaded to waive his rights to appeal or collaterally attack his sentence by his attorney or anyone else. The defendant is waiving those rights because he personally believes it is in his best interest to do so in order to obtain the benefit of the concessions made by the United States in this agreement. The defendant understands the United States is unwilling to make some of

those concessions unless he is willing to waive his rights to appeal or collaterally attack his sentence as part of the bargain. The defendant asks the Court to accept this waiver so he can receive the full benefit of this agreement.

#### VIOLATION OF AGREEMENT BY DEFENDANT

49. The defendant further agrees that if the defendant violates the terms of this plea agreement the United States has the option to declare the plea agreement null and void. In the event the United States exercises its option to declare the plea agreement null and void, the United States will be completely released from all of its obligations under this plea agreement and the United States will be free to seek to vacate the defendant's conviction and/sentence, and to file additional charges against the defendant or to seek the defendant's resentencing. In the event, however, the United States exercises its option to declare the plea agreement null and void, the defendant will not be allowed to withdraw from any previously accepted guilty plea.

50. Whether or not the defendant has violated the terms of the plea agreement shall be determined by the Court. The burden of proof shall rest with the United States to establish by a preponderance of the evidence that the defendant violated the terms of the plea agreement.

#### ACKNOWLEDGMENTS OF DEFENDANT AND DEFENSE COUNSEL

51. The defendant and his attorney acknowledge that they have reviewed and defendant understands the possible application of Sentencing Guidelines §1B1.3 (Relevant Conduct) and §1B1.4 (Information to be Used in Imposing Sentence).



52. The defendant understands that by entering a Plea of Guilty, the defendant is waiving certain of his rights. Specifically, the defendant understands that by pleading guilty he is waiving the following rights, among others:

a. The right to plead not guilty or persist in the plea of not guilty if already made. If the defendant persisted in a plea of not guilty to the charges the defendant would have the right to a public and speedy trial.

b. The right to a trial by jury. The defendant has an absolute right to a jury trial. The jury would be composed of twelve persons selected at random. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict the defendant unless, after hearing all the evidence, it was persuaded that the United States had met its burden of proving the defendant guilty beyond a reasonable doubt. The defendant could also ask for a trial by the Judge instead of a trial by a jury.

c. The right to the assistance of counsel at trial. The defendant has the right to be represented by an attorney at every stage of the proceedings and, if the court finds the defendant is unable to afford an attorney, one will be appointed to represent the defendant at no cost to the defendant.

d. The right to confront and cross-examine adverse witnesses. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to see and hear those government

witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant's counsel could present witnesses and other evidence on the defendant's behalf. If the witnesses for the defendant refused to appear voluntarily, their attendance could be required through the subpoena power of the court.

e. The right against compelled self-incrimination. At a trial, the defendant would have a privilege against self-incrimination so that the defendant could decline to testify, and no inference of guilt could be drawn from the defendant's refusal to testify. If the defendant desired to do so, the defendant could testify on the defendant's own behalf.

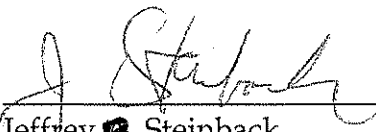
53. The defendant understands that by pleading guilty the defendant is waiving all the rights set forth in the prior paragraphs. The defendant's attorney has explained those rights to the defendant and the consequences of the waiver of those rights.

54. Defense Counsel

I have read this Plea Agreement and have discussed it fully with my client, Scott J. Fitts. It accurately and completely sets forth the entire Plea Agreement. I concur in the guilty plea as set forth in this Plea Agreement.

Date: \_\_\_\_\_

May 29, 2007

  
\_\_\_\_\_  
Jeffrey B. Steinback  
Attorney for the Defendant

55. Defendant

I have read this entire Plea Agreement carefully and have discussed it fully with my attorney, Jeffrey A. Steinback. I fully understand this agreement and accept and agree to it without reservation, including the paragraphs labeled "Waiver of Right to Appeal" and "Waiver of Right to Collateral Attack."

I am entering into this agreement voluntarily and of my own free will in order to gain the benefit of the promises made by the United States. I am pleading guilty because I am in fact guilty, and I agree that the facts stated in this agreement about my criminal conduct are true. No threats, promises, or commitments have been made to me or to anyone else, and no agreements have been reached, express or implied, to influence me to plead guilty other than those stated in this written plea agreement nor am I under the influence of anything that could impede my ability to understand fully this Plea Agreement.

I am satisfied with the legal services provided by my attorney in connection with this case, this Plea Agreement and matters related to it. I further understand that by signing below I am stating I agree with everything stated in this section of the Plea Agreement and I am accepting and entering into this Plea Agreement in its entirety.

I hereby reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Plea Agreement.

Date: \_\_\_\_\_

May 28, 2009

\_\_\_\_\_  
Scott J. Fitts  
Defendant

Scott J. Fitts

ACKNOWLEDGMENT OF THE UNITED STATES

56. United States Attorney's Office

I accept and agree to this Plea Agreement for the United States of America.

Date: \_\_\_\_\_

May 28, 2009

\_\_\_\_\_  
Eugene L. Miller  
Assistant United States Attorney  
201 South Vine Street  
Urbana, Illinois 61802  
Telephone: 217/373-5875

Eugene L. Miller