

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 13-00291-05-CR-W-BCW
)	
GERALD E. BARBER,)	
)	
Defendant.)	

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney's Office for the Western District of Missouri (otherwise referred to as "the Government" or "the United States"), represented by Tammy Dickinson, United States Attorney, and Paul S. Becker and Justin G. Davids, Assistant United States Attorneys, and the defendant, Gerald E. Barber ("the defendant"), represented by Kenton M. Hall.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to Count One of the indictment charging him with a violation of 18 U.S.C. § 371, that is, conspiracy to commit wire fraud (18 U.S.C. § 1343) and contraband cigarette trafficking (18 U.S.C. §§ 2341-2346). The defendant also agrees to the forfeiture allegation in the indictment; specifically, Mr. Barber agrees to a money judgment in the amount of \$80,000 representing the remaining profits obtained by SCTC as a result of his role in the conspiracy. By entering into this plea agreement, the defendant admits that he knowingly committed this offense, and is in fact guilty of this offense.

3. Factual Basis for Guilty Plea. The parties agree that the facts constituting the offense to which he is pleading guilty are as follows:

The facts and overt acts included in the indictment are incorporated into this plea agreement and paragraph 3 by reference.

The Seneca-Cayuga Tobacco Company (SCTC), located in Grove, Oklahoma, is a corporation operated by the Seneca Cayuga Tribe of Oklahoma, a federally recognized Indian tribe. During the relevant time period, Gerald E. Barber was the president of SCTC.

New York State imposes excise taxes on all cigarettes sold in the state, unless expressly exempted by law or by private agreement between New York State and an Indian nation or tribe (either approved by the legislature or part of a stipulation and order approved by a federal court). Under New York State law, cigarettes can only be transported into the state by a limited number of state-licensed stamping agents (i.e. wholesalers). The New York Department of Taxation and Finance pre-collects the cigarette excise tax from these state-licensed stamping agents on cigarettes that are sold to retailers, but prior to their delivery to the retailers. This taxing scheme was upheld as specifically applicable against Indian nations on May 9, 2011, by the United States Court of Appeals for the Second Circuit in *Oneida Nation of New York v. Cuomo*, 645 F.3d 154 (2d Cir. 2011). Federal and New York State law require that tax stamps be affixed to cigarette packages—prior to their delivery to retailers—reflecting that the required state taxes have been paid. During the relevant time period, New York State imposed a cigarette excise tax of \$4.35 per pack or \$43.50 per carton.

In New York State, only licensed wholesalers may purchase unstamped cigarettes. This is done either directly through the cigarette manufacturer or through other wholesalers. Under New York State law, it is the obligation of state-licensed stamping agents to prepay the excise

tax and affix stamps on all cigarette packs. Under New York state and federal law, tobacco wholesalers must report the sales of cigarettes to the state.

During the relevant time period, Unindicted Co-conspirator 1 (UCC1) and Craig Sheffler owned and operated Cheap Tobacco Wholesale (CTW), a cigarette wholesale business located in Independence, Missouri. UCC1 operated the business with the assistance of Sheffler until UCC1's death on October 27, 2011, at which time Sheffler took over operations. During the relevant time period, Gholamreza "Reza" Tadaiyon owned and operated Brand Name Connoisseurs (BNC), located in Florida. Neither Tadaiyon nor BNC is a licensed tobacco wholesaler or state stamping agent. During the relevant time period, William F. Parry owned and operated Wolf's Run, located in Irving, New York, a tobacco retail and wholesale operation. Neither William F. Parry nor Wolf's Run was a licensed New York tobacco wholesaler authorized to bring cigarettes into New York State.

Ho-Chunk, Inc. (HCI), located in Winnebago, Nebraska, is a corporation operated by the Winnebago Tribe of Nebraska, a federally recognized Indian tribe. HCI is the parent company of HCI Distribution (HCID), also located in Winnebago, Nebraska, which claims to be one of the largest tribal cigarette and tobacco distributors in the United States. Leisa Guerrero was the officer in charge of operating HCID. During the relevant time period, Teddy Frenchmen was the HCID warehouse manager. Further, HCI is the parent company of HCI Logistics (HCIL), located in Omaha, Nebraska, which is a commercial transportation company. HCID often used HCIL to transport product from the HCID warehouse in Winnebago, Nebraska. Neither HCI nor HCID are licensed tobacco wholesalers or state stamping agents in Nebraska or New York State.

During the relevant time period, Gerald E. Barber, participated in a conspiracy with Tadaiyon, Sheffler, and others, to transport premium-brand contraband cigarettes onto Indian reservations located in New York State, without New York State's prior approval, in order to avoid New York State cigarette taxes and reporting requirements. Further, Gerald E. Barber participated in a conspiracy with Tadaiyon, Parry and other individuals located on New York Indian reservations in order to commit wire fraud relating to the sale and transportation of contraband cigarettes. As a result of these conspiracies, New York State suffered significant excise tax loss.

The basic manner and means of the conspiracy, as related to Barber, is summarized as follows:

During the conspiracy timeframe, UCC1 and Sheffler, through CTW, trafficked in contraband premium-brand cigarettes. They would purchase the unstamped premium-brand cigarettes from an undercover ATF agent located in Kansas City, Missouri. Sometimes they would then transport the cigarettes back to the CTW warehouse while other times they would arrange for their customer to directly pick up from the ATF undercover warehouse. Tadaiyon was one of CTW's customers that would receive unstamped, contraband cigarettes.

Barber, despite SCTC manufacturing their own brands of native cigarettes, was interested in selling unstamped premium-brand cigarettes to smoke shops on other Indian nations, specifically in New York State. Barber would order premium-brand contraband cigarettes from Tadaiyon, who would then purchase those cigarettes from CTW. Barber would sell those premium-brand cigarettes to smoke shops – such as Totem Pole, A.J.’s, and Jan’s – located on New York State Indian reservations. The benefit to those smoke shops was that they did not pay New York State cigarette taxes; thus, they could undercut the prices charged by off-reservation cigarette retailers.

In order to facilitate this scheme and transport the contraband cigarettes to New York State, Barber and Tadaiyon worked with HCID, HCIL, Guerrero, and Frenchman. Barber and Tadaiyon needed to use HCID because their previous proxy, located in Virginia, was no longer available, the result of the legitimate New York stamping agent refusing to continue the business arrangement after the *Oneida* decision.

To pay for the cigarettes (which were charged on delivery), the Indian smoke shops would wire money across state lines, often to SCTC. SCTC would then wire money across state lines to Tadaiyon and BNC. BNC would then wire money across state lines to CTW. UCC1 and/or Sheffler would pay the undercover ATF agents, often in cash.

Gerald E. Barber admits that a conspiracy existed from on or about July 2010 through on or about January 26, 2012; and that he entered into an agreement or reached an understanding to commit a crime, namely wire fraud and contraband cigarette trafficking, with one or more people. The parties stipulate that \$80,000 appropriately represents the amount of remaining profit SCTC received as a result of Barber’s role in the conspiracy.

Moreover, other co-conspirators committed overt acts in the Western District of Missouri and elsewhere in order to fulfill and deliver these contraband cigarette orders to retailers in New York State. This conspiracy existed in the Western District of Missouri and elsewhere, and venue is appropriate in the Western District of Missouri.

4. Use of Factual Admissions and Relevant Conduct. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines (“U.S.S.G.”), including the calculation of the defendant’s offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment as well as all other uncharged related criminal activity may be considered as “relevant

conduct” pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charge to which he is pleading guilty.

5. Statutory Penalties. The defendant understands that upon his plea of guilty to Count One of the indictment charging him with conspiracy to commit wire fraud and contraband cigarette trafficking, the maximum penalty the Court may impose is not more than 5 years of imprisonment, not more than a \$250,000 fine, not more than 3 years of supervised release, and a \$100 mandatory special assessment per felony count of conviction which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class D felony.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the following:

a. In determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is “unreasonable”;

b. The Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;

c. In addition to a sentence of imprisonment, the Court may impose a term of supervised release up to three years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;

d. If the defendant violates a condition of his supervised release, the Court may revoke his supervised release and impose an additional period of imprisonment of up to two years without credit for time previously spent on supervised release. In addition to a new term of imprisonment, the Court also may impose a new period of supervised release, the length of which cannot exceed three years, less the term of imprisonment imposed upon revocation of the defendant's first supervised release;

e. The Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;

f. Any sentence of imprisonment imposed by the Court will not allow for parole;

g. The Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office;

h. The defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court;

i. The defendant agrees that the United States may institute civil, judicial or administrative forfeiture proceedings against all forfeitable assets in which the defendant has an interest, and that he will not contest any such forfeiture proceedings;

j. The defendant agrees to forfeit all interests he owns or over which he exercises control, directly or indirectly, in any asset that is subject to forfeiture to the United States either directly or as a substitute for property that was subject to forfeiture but is no longer available for the reasons set forth in 21 U.S.C. § 853(p) (which is applicable to this action pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)), including but not limited to the following specific property: forfeiture and money judgment in the amount of \$80,000. As part of this money judgment, the defendant agrees to pay \$20,000 at the time of sentencing, and pay the remaining balance within six months of the sentencing date. With respect to any asset which the defendant has agreed to forfeit, the defendant waives any constitutional and statutory challenges in any manner (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 under the Eighth Amendment to the United States Constitution;

k. The defendant agrees to fully and truthfully disclose the existence, nature and location of all assets forfeitable to the United States, either directly or as a substitute asset, in which he, his co-defendants and his co-conspirators have or had any direct or indirect financial interest, or exercise or exercised control, directly or indirectly, during the period from July 2010 to the present. The defendant also agrees to fully and completely assist the United States in the recovery and forfeiture of all such forfeitable assets;

l. The defendant agrees to take all necessary steps to comply with the forfeiture matters set forth herein before his sentencing; and

m. Within 10 days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit (1) a Tax Information Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that the United States will use the financial information when making its recommendation to the Court regarding the defendant's acceptance of responsibility.

7. Government's Agreements. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal offenses related to the July 2010 through January 26, 2012 conspiracy to commit wire fraud and contraband cigarette trafficking which it has venue and which arose out of the defendant's conduct described above. Further, the Government agrees to move to dismiss at the time of sentencing Counts 2-6, 16-29, 31-34, and 39-43. If the defendant complies with the cooperation terms of this plea agreement set forth below, the Government will file a motion pursuant to U.S.S.G. § 5K1.1, requesting that the court sentence the defendant to a term of probation.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. Cooperation. Defendant agrees to cooperate fully and truthfully with law enforcement agents investigating criminal activity in the Western District of Missouri and elsewhere. That cooperation includes providing full, complete, and honest statements regarding his knowledge of such activity; actively cooperating in corroborating the information he provides; and testifying fully and truthfully if called as a witness before any Grand Jury, any trial, or any other related proceeding. The cooperation includes being interviewed by any government agent, expert for the Government, or prosecutor for the United States. In particular, the defendant agrees:

- a. to provide truthful, complete, and accurate information and testimony in the trial of this matter or in any related hearing;
- b. to provide all information concerning his knowledge of, and participation in, the offenses charged in the indictment, and any other crimes about which he has knowledge;

c. to submit to a polygraph examination if requested to do so by counsel for the United States;

d. he will not falsely implicate any person or entity and will not protect any person or entity through false or misleading information or omission and that all information he provides will be truthful, complete, and accurate;

e. to testify as a witness before any grand jury, hearing, or trial when requested to do so by the United States;

f. to hold himself reasonably available for any interviews the United States may require. Defendant waives any right to the presence of counsel at such meetings, debriefings, or pretrial preparation sessions. The parties agree that no prior consultation with defendant's attorney shall be necessary to conduct these meetings, debriefings or interviews, unless defendant's attorney specifically requests such notice;

g. to provide the United States with all documents or other items under his control which may pertain to any criminal violation;

h. to cooperate with any local, state, and federal law enforcement agency as requested by counsel for the United States; and

i. to continue his cooperation after the time he is sentenced if requested to do so by the United States. Failure to continue to cooperate after sentence is imposed constitutes a basis to void this agreement by the United States and will allow the Government to pursue any remedy for defendant's breach including, by way of illustration and not by way of limitation, re-instituting charges that are dismissed pursuant to this agreement.

If, in the good faith estimation of the United States, defendant's information or testimony proves to be untruthful or incomplete in any way, regardless of whether the untruthfulness helps or hurts the United States' case, defendant will have breached this plea agreement. In the event defendant breaches the plea agreement, the United States will no longer be bound by, and may withdraw from, the plea agreement and take defendant to trial on any charges of which the United States is aware. Defendant agrees that if the United States in good faith determines that he has not provided full and truthful cooperation, or has committed any local, state, or federal

crime between the date of this plea agreement and his sentencing, or has otherwise violated any other provision of this plea agreement, or has violated the terms and conditions of his release while on bond as required by the Court, the United States will be relieved of its obligations under this plea agreement, the defendant's previously entered plea of guilty shall remain in effect and cannot be withdrawn, and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and any substantive offenses arising from this investigation. Such prosecution may be based upon any information provided by the defendant during the course of his cooperation, or upon leads derived therefrom, and this information may be used as evidence against him. Further, any prosecution which is not barred by the applicable statute of limitations on the date of the signing of this plea agreement may be commenced against the defendant in accordance with this plea agreement, notwithstanding the expiration of the statute of limitations between the time of signing this agreement and the commencement of the prosecution. It is the specific intent of this plea agreement to waive any and all defenses based upon the statute of limitations with respect to any prosecution which is not barred by the statute of limitations on the date this plea agreement is signed by the defendant.

9. Cooperation Stipulations. In exchange for the defendant's agreement to cooperate with the United States, the United States agrees not to use new information that the defendant might provide about defendant's own criminal conduct except as specifically authorized by U.S.S.G. § 1B1.8. As such, this information may be revealed to the Court but may not be used against the defendant in determining the defendant's applicable Guidelines range or departing above the Guidelines range. Defendant understands and agrees, however, that under U.S.S.G.

§ 1B1.8, there shall be no such restrictions on the use of such information: (1) if it was previously known to the United States; (2) if it was revealed to the United States by, or discoverable through, an independent source; (3) in a prosecution of defendant for perjury or giving a false statement; or (4) in the event there is a breach of this agreement.

10. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the count to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

11. Withdrawal of Plea. Either party reserves the right to withdraw from this plea agreement for any or no reason at any time prior to the entry of the defendant's plea of guilty and its formal acceptance by the Court. In the event of such withdrawal, the parties will be restored to their pre-plea agreement positions to the fullest extent possible. However, after the plea has been formally accepted by the Court, the defendant may withdraw his plea of guilty only if the Court rejects the plea agreement or if the defendant can show a fair and just reason for requesting the withdrawal. The defendant understands that if the Court accepts his plea of guilty and this

plea agreement but subsequently imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

12. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. The applicable Guidelines section for the offense of conviction is U.S.S.G. § 2B1.1(a)(2), which provides for a base offense level of 6;

c. A 20-point enhancement for a loss in excess of \$7 million under U.S.S.G. § 2B1.1(b)(1)(K);

d. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has 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 Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. Therefore, he is entitled to a three-level reduction pursuant to § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect, unless the defendant (1) fails to abide by all of the terms and conditions of this plea agreement and his pretrial release; or (2) attempts to withdraw his guilty plea, violates the law, or otherwise engages in conduct inconsistent with his acceptance of responsibility;

e. There is no agreement between the parties regarding the defendant's criminal history category. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

f. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept

these stipulations will not, as outlined in Paragraph 9 of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;

g. The defendant may seek a downward departure from the Guidelines or a sentence outside the Guidelines range. The agreement by the parties regarding departure from the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not “unreasonable”;

h. The defendant consents to judicial fact-finding by a preponderance of the evidence for all issues pertaining to the determination of the defendant’s sentence, including the determination of any mandatory minimum sentence (including the facts that support any specific offense characteristic or other enhancement or adjustment), and any legally authorized increase above the normal statutory maximum. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence, may consider any reliable information, including hearsay; and

i. The defendant understands and agrees that the factual admissions contained in Paragraph 3 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed-upon Guidelines calculations contained in this agreement.

13. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

14. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to

void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

15. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charge in the indictment;
- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed and that the United States remains free on appeal or collateral proceedings to defend the legality and propriety of the sentence actually imposed, even if the Court chooses not to follow any recommendation made by the United States; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

16. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against him;
- e. the right to compel or subpoena witnesses to appear on his behalf; and
- f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to a felony offense and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

17. Waiver of Appellate and Post-Conviction Rights.

a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement money, he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement, except on grounds of (1) ineffective assistance of counsel; or (2) prosecutorial misconduct.

b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except claims of (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An “illegal sentence” includes a sentence imposed in excess of the statutory maximum, but does *not* include less serious sentencing errors, such as a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government’s appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

18. Financial Obligations. By entering into this plea agreement, the defendant represents that he understands and agrees to the following financial obligations:

a. The Court must order restitution to the victims of the offense to which the defendant is pleading guilty. The defendant agrees that the Court may order restitution in connection with the conduct charged in any counts of the indictment which are to be dismissed and all other uncharged related criminal activity.

b. The United States may use the Federal Debt Collection Procedures Act and any other remedies provided by law to enforce any restitution order that may be entered as part of the sentence in this case and to collect any fine.

c. The defendant will fully and truthfully disclose all assets and property in which he has any interest, or over which the defendant exercises control directly or indirectly, including assets and property held by a spouse, nominee or other third party. The defendant's disclosure obligations are ongoing, and are in force from the execution of this agreement until the defendant has satisfied the restitution order in full.

d. Within 10 days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit (1) a Tax Information Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that compliance with these requests will be taken into account when the United States makes a recommendation to the Court regarding the defendant's acceptance of responsibility.

e. At the request of the USAO, the defendant agrees to undergo any polygraph examination the United States might choose to administer concerning the identification and recovery of substitute assets and restitution.

f. The defendant hereby authorizes the USAO to obtain a credit report pertaining to him to assist the USAO in evaluating the defendant's ability to satisfy any financial obligations imposed as part of the sentence.

g. The defendant understands that a Special Assessment will be imposed as part of the sentence in this case. The defendant promises to pay the Special Assessment of \$100 by submitting a satisfactory form of payment to the Clerk of the Court prior to appearing for the sentencing proceeding in this case. The defendant agrees to provide the Clerk's receipt as evidence of his fulfillment of this obligation at the time of sentencing.

h. The defendant certifies that he has made no transfer of assets or property for the purpose of (1) evading financial obligations created by this Agreement; (2) evading obligations that may be imposed by the Court; nor (3) hindering efforts of the USAO to enforce such financial obligations. Moreover, the defendant promises that he will make no such transfers in the future.

i. In the event the United States learns of any misrepresentation in the financial disclosure statement, or of any asset in which the defendant had an interest at the time of this plea agreement that is not disclosed in the financial

disclosure statement, and in the event such misrepresentation or nondisclosure changes the estimated net worth of the defendant by ten thousand dollars (\$10,000.00) or more, the United States may at its option: (1) choose to be relieved of its obligations under this plea agreement; or (2) let the plea agreement stand, collect the full forfeiture, restitution, and fines imposed by any criminal or civil judgment, and also collect 100% (one hundred percent) of the value of any previously undisclosed assets. The defendant agrees not to contest any collection of such assets. In the event the United States opts to be relieved of its obligations under this plea agreement, the defendant's previously entered pleas of guilty shall remain in effect and cannot be withdrawn.

19. Waiver of FOIA Request. The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

20. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

21. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that pertains to the admissibility of any statements made by his subsequent to this plea agreement.

22. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorney or any other party to induce him to enter his plea of guilty.

23. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement or any written supplemental agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

24. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be

interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

Tammy Dickinson
United States Attorney

Dated: 01/23/2015

/s/ Paul S. Becker
Paul S. Becker
Assistant United States Attorney

/s/ Justin G. Davids
Justin G. Davids
Assistant United States Attorney

I have consulted with my attorney and fully understand all of my rights with respect to the offense charged in the indictment. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement and I voluntarily agree to it.

Dated: 01/23/2015

/s/ Gerald E. Barber
Gerald E. Barber
Defendant

I am defendant Gerald E. Barber's attorney. I have fully explained to Mr. Barber his rights with respect to the offense charged in the indictment. Further, I have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, Gerald E. Barber's decision to enter into this plea agreement is an informed and voluntary one.

Dated: 01/23/2015

/s/ Kenton M. Hall
Kenton M. Hall
Attorney for Defendant