

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
(Wichita Docket)

<b>UNITED STATES OF AMERICA,</b>	}	
	}	
Plaintiff,	}	
	}	
v.	}	No. 12-10184-01-EFM
	}	
<b>ERIC BURNS,</b>	}	
	}	
Defendant.	}	

**PLEA AGREEMENT PURSUANT TO FED. R. CRIM. P. 11(c)(1)(C)**

The United States of America, by Debra L. Barnett, Assistant United States Attorney, and Eric Burns, the defendant, personally and by and through his attorney, Timothy Henry, hereby enter into the following plea agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

**1. Defendant's Guilty Plea.** If the Court permits, the defendant agrees to plead guilty to Counts One, Four, Six, Seven and Ten of the Superseding Indictment, which charges violations of Title 18, United States Code, § 1343, that is, wire fraud. By entering into this plea agreement, the defendant admits to knowingly committing these offenses, and to being guilty of these offenses. The defendant understands that the maximum sentence which may be imposed as to Counts One, Four, Six, Seven and Ten of the Superseding Indictment to which the defendant has

agreed to plead guilty is not more than 20 years of imprisonment, a \$250,000.00 fine, three years of supervised release, restitution in an amount not exceeding \$2,246,870.00 and a \$100.00 mandatory special assessment per count of conviction. The United States agrees to move to dismiss the Indictment, and Counts Two, Three, Five, Eight, Nine and Eleven of the Superseding Indictment at the time of sentencing.

**2. Factual Basis for the Guilty Plea.** The parties agree the facts constituting the offense to which the defendant is pleading guilty are as follows:

Count One: The defendant admits that on or about August 20, 2008, in the District of Kansas, and elsewhere, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses and representations, he devised a plan which caused to be transmitted by means of wire communications in interstate commerce, signals and sounds which transferred money belonging to Robert and/or Juhree Ring in the amount of \$70,000.00 from Boston, Massachusetts, to an account in New York, New York, so that the money could be provided to the defendant who represented that he was authorized to withdraw these funds when the defendant knew that this was a lie because Robert and/or Juhree Ring did not authorize this withdrawal.

Count Four: The defendant admits that on or about July 7, 2010, in the District of Kansas, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses and representations, he devised a plan which caused to be transmitted by means of wire communications in interstate commerce, signals and sounds which transferred money and funds belonging to Denny and Suzanne Davis in the amount of \$25,000.00 from Boston, Massachusetts, to Wichita, Kansas, so that the money could be provided to the defendant who represented that he would invest the money for Denny and Suzanne Davis, when the defendant knew this was a lie and

that this money would not be invested on behalf of Denny and Suzanne Davis as represented, in violation of Title 18, United States Code, Section 1343 and 2.

Count Six: The defendant admits that on or about August 13, 2010, in the District of Kansas, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses and representations, he devised a plan which caused to be transmitted by means of wire communications in interstate commerce, signals and sounds which transferred money and funds belonging to Karen Diltz in the amount of \$12,000.00 from Boston, Massachusetts, to Wichita, Kansas, so that the money could be provided to the defendant who represented that he would invest the money for Karen Diltz, when the defendant knew this was a lie and that this money would not be invested on behalf of Karen Diltz as represented.

Count Seven: The defendant admits that on or about August 26, 2010, in the District of Kansas, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses and representations, he devised a plan which caused to be transmitted by means of wire communications in interstate commerce, signals and sounds which transferred money and funds belonging to Kim Nixon in the amount of \$150,000.00 from Boston, Massachusetts, to Wichita, Kansas, so that the money could be provided to the defendant who represented that he would invest the money for Kim Nixon, when the defendant knew this was a lie and that this money would not be invested on behalf of Kim Nixon as represented.

Count Ten: The defendant admits that on or about June 7, 2011, in the District of Kansas, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses and representations, he devised a plan which caused to be transmitted by means of wire communications in interstate commerce, signals and sounds which transferred money and funds belonging to Todd and Kristina Cantrell in the amount of \$130,000.00 from Boston, Massachusetts, to Wichita, Kansas, so that the money could be provided to the defendant who represented that he would invest the money for

Todd and Kristina Cantrell, when the defendant knew this was a lie and that this money would not be invested on behalf of Todd and Kristina Cantrell as represented.

**3. Proposed (c)(1)(C) Sentence.** The parties propose, as an appropriate disposition of the case, a sentence of 63 months per count of 18 U.S.C. § 1343, to run concurrently with one another for a total sentence of 63 months in prison; three years of supervised release; no fine; restitution and the mandatory special assessment of \$100.00 per count of conviction to be paid during the defendant's incarceration. The parties seek this binding plea agreement as an appropriate disposition of the case because it brings certainty to the sentencing process and assures that the defendant and the government will benefit from the bargain they have struck if the Court permits itself to be bound by the proposed sentence; the sentence is within the appropriate guideline range as determined by the parties; the interests of justice are served by the sentence, thereby assuring that the sentence is consistent with the sentencing factors of 18 U.S.C. § 3553(a); and if the Court does not agree with the sentence, the parties may be restored to the positions they maintained prior to reaching this plea agreement. This agreement centers on the defendant's agreement to enter his guilty plea as soon as the Court's schedule permits, thereby preserving valuable Court, prosecution, public defender, probation office, U.S. Marshal's Service and other law enforcement resources.

4. **Application of the Sentencing Guidelines.** The parties are of the belief that the proposed sentence does not offend the now advisory sentencing guidelines, but because this proposed sentence is sought pursuant to Fed. R. Crim. P. 11(c)(1)(C), the parties are not requesting imposition of an advisory guideline sentence.

5. **Government's Additional Agreement.** In return for the defendant's plea of guilty as set forth herein, the United States Attorney for the District of Kansas also agrees to not file any additional charges against the defendant arising out of the facts forming the basis for the Indictment and/or Information.

6. **Whether to Accept the Proposed Plea Agreement and Sentence is Up to the Court.** The Court has no obligation to accept the proposed plea agreement and sentence. It is solely within the Court's discretion whether to accept the proposed binding plea agreement as an appropriate disposition of the case.

7. **Withdrawal of Plea Permitted Only if the Court Does Not Accept the Plea Agreement and Proposed Sentence.** On the other hand, if the Court agrees to be bound by proposed plea agreement and accepts the defendant's plea of guilty, the defendant will not be permitted to withdraw it. Only if the Court rejects the proposed plea agreement will the defendant be permitted to withdraw his guilty plea.

**8. Payment of Special Assessment.** The defendant understands that a mandatory special assessment of \$100.00 per count of conviction will be entered against the defendant at the time of sentencing. The parties acknowledge the defendant is without adequate resources to pay the special assessment at the time of sentencing and agree to recommend that the Court order payment to occur during the defendant's period of incarceration.

**9. Waiver of Appeal and Collateral Attack.** The defendant knowingly and voluntarily waives any right to appeal or collaterally attack any matter in connection with this prosecution, the defendant's conviction, or the components of the sentence to be imposed herein including the length and conditions of supervised release. The defendant is aware that Title 18, U.S.C. § 3742 affords a defendant the right to appeal the conviction and sentence imposed. By entering into this agreement, the defendant knowingly waives any right to appeal a sentence imposed which is within the guideline range determined appropriate by the court. The defendant also waives any right to challenge a sentence or otherwise attempt to modify or change his sentence or manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under Title 28, U.S.C. § 2255 [except as limited by *United States v. Cockerham*, 237 F.3d 1179, 1187 (10th Cir. 2001)], a motion brought under Title 18, U.S.C. § 3582(c)(2) and a motion brought under Fed. Rule of Civ. Pro

60(b). In other words, the defendant waives the right to appeal the sentence imposed in this case except to the extent, if any, the court departs upwards from the applicable sentencing guideline range determined by the court. However, if the United States exercises its right to appeal the sentence imposed as authorized by Title 18, U.S.C. § 3742(b), the defendant is released from this waiver and may appeal the sentence received as authorized by Title 18, U.S.C. § 3742(a). Notwithstanding the forgoing waivers, the parties understand that the defendant in no way waives any subsequent claims with regards to ineffective assistance of counsel or prosecutorial misconduct.

**10. Waiver of FOIA Request.** The defendant waives all 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, Title 5, U.S.C. § 552, or the Privacy Act of 1974, Title 5, U.S.C. § 552a.

**11. Full Disclosure by United States.** The defendant understands the United States will provide to the court and the United States Probation Office all information it deems relevant to determining the appropriate sentence in this case. This may include information concerning the background, character, and conduct of the defendant including the entirety of the defendant's criminal activities. The

defendant understands these disclosures are not limited to the count to which the defendant has pled guilty. The United States may respond to comments made or positions taken by the defendant or 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 defendant also has the right to provide information concerning the offense and to make recommendations to the court and the United States Probation Office.

**12. Parties to the Agreement.** The defendant understands this plea agreement binds only the defendant and the United States Attorney for the District of Kansas, and that it does not bind any other federal, state, or local prosecution authority.

**13. Identification of Assets & Agreement Concerning Monetary Penalties.** The defendant agrees to cooperate fully with the United States Attorney's Office and specifically:

a) Provide a financial statement on a form approved by the United States Attorney's Office that discloses all assets in which defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by



a spouse, nominee or other third party, as well as any transfer of assets that has taken place within 3 years preceding the entry of this plea agreement.

b) Submit to an examination, which may be taken under oath and may include a polygraph examination.

c) Acknowledges that any waivers, consents, or releases signed by the defendant for purposes of the Presentence Investigation Report extends to the United States Attorney's Office.

d) Will not encumber, transfer, or dispose of any monies, property or assets under his/her custody or control, without written approval from the United States Attorney's Office .

e) The defendant understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the court will be due and payable immediately and subject to immediate enforcement by the United States. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

f) The defendant waives any requirement for demand of payment on any fine, restitution, or assessment the Court announces on the record the day of sentencing.

**14. No Other Agreements.** The defendant has had sufficient time to discuss this case, the evidence, and this agreement with the defendant's attorney and defendant is fully satisfied with the advice and representation provided by defendant's counsel. Further, the defendant acknowledges that he has had the plea agreement read to him, understands it and agrees it is true and accurate and not the result of any threats, duress or coercion. The defendant further understands that this plea agreement supersedes any and all other agreements or negotiations between the parties, and that this agreement embodies each and every term of the agreement between the parties. The defendant acknowledges that the defendant is entering into this agreement and is pleading guilty because the defendant is guilty and is doing so freely and voluntarily.

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Debra L. Barnett  
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(316) 269-6481  
Kan. Sup. Ct. No. 12729

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

\_\_\_\_\_  
*/s/ Jared S. Maag*  
Jared Maag  
Assistant United States Attorney  
Criminal Chief

Date: 10 January 2013

\_\_\_\_\_  
*/s/ K. Michael Warner*  
K. Michael Warner  
Assistant United States Attorney  
First Assistant

Date: 10 January 2013

\_\_\_\_\_  
Eric Burns  
Defendant

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

\_\_\_\_\_  
Timothy Henry  
Assistant Federal Public Defender  
301 N. Main, Suite 850  
Wichita, Kansas 67202

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