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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff

v.

GREG J. COSSMAN,

Defendant

Case Number:

106 CR 0014
PLEA AGREEMENT

J. **SPIEGEL**

The defendant, **GREG J. COSSMAN**, and his attorney, Theodore J. Froncek, agree with the United States as follows:

RIGHTS OF THE DEFENDANT

1. The defendant understands his rights:
 - a. to be charged by way of an Indictment returned by a Federal Grand Jury;
 - b. to plead not guilty;
 - c. to have a trial by jury;
 - d. to confront and cross-examine witnesses and to call witnesses in his defense;
 - e. against compelled self incrimination; and
 - f. to have at least thirty (30) days after appearance with counsel to prepare for trial.

WAIVER OF RIGHTS AND PLEA OF GUILTY

2. The defendant waives these rights and pleads guilty to the Information filed herein, charging a violation of 18 U.S.C. § 1349 (Conspiracy to Commit Mail and Wire Fraud).

MAXIMUM PENALTY

3. The maximum penalty for this offense is:
 - a. imprisonment for a period not to exceed 20 years, a fine not to exceed the greater of \$250,000 or twice the pecuniary gain to defendant or loss to the victim, and a mandatory term of supervised release of not more than 5 years;
 - b. additional imprisonment for part or all of the term of supervised release if the defendant violates the conditions of supervised release;
 - c. a mandatory special assessment of \$100.00 due prior to the date of sentencing, payable to Clerk of Courts, U.S. District Court, Southern District of Ohio; and
 - d. mandatory restitution (if applicable) pursuant to 18 U.S.C. § 3663A(C)(1), the Mandatory Restitution Act of 1996, the amount of which defendant understands may include defendant's total offense conduct and is not limited to the restitution attributable to the count(s) of conviction, pursuant to 18 U.S.C. § 3663(a)(3).

SENTENCING

4. The sentence in this case will be imposed by the Court. There is no agreement as to what that sentence will be. The defendant understands that the Court could impose the statutory maximum sentence as stated in paragraph 3 above. The defendant understands that the United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") are advisory and not mandatory, although the Court is required to consider the Sentencing Guidelines and their application to this case in imposing sentence. Sentencing is within the discretion of the Court, and the defendant understands that the Court may or may not choose to impose sentence based on the applicable sentencing range under the Sentencing Guidelines for the offense charged in the Information. The defendant has thoroughly reviewed with his attorney how the Sentencing Guidelines might apply to this case. The defendant understands that he does not have the right to

withdraw his guilty plea if the Court chooses to apply the Sentencing Guidelines including upward departures or otherwise imposes a sentence that is higher than expected.

AGREEMENT OF THE UNITED STATES

5. The United States agrees as follows:
 - a. In consideration of the defendant's agreement to waive indictment and plead guilty to the Information filed herein, the United States Attorney for the Southern District of Ohio will not further prosecute the defendant for any conduct prior to the date of this Plea Agreement that was part of the same course of criminal conduct as the matters described in the Information;
 - b. In consideration of the defendant's timely and truthful admission of the conduct charged in the Information to which he pleads guilty, the United States Attorney for the Southern District of Ohio recommends that the defendant's offense level be reduced by two levels for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a); and
 - c. If the defendant's offense level is 16 or greater before the two-level reduction under U.S.S.G. § 3E1.1(a) above, the United States agrees that the defendant 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, and therefore the United States hereby moves the Court to find that the defendant qualifies for an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b).

6. The agreement stated in paragraph 5, above, is limited to the United States Attorney's Office for the Southern District of Ohio and does not bind any other federal, state or local prosecuting authorities.

7. By virtue of the Defendant pleading guilty to the Information, the defendant understands that he is not a prevailing party as defined by 18 U.S.C. § 3006A and, thus, hereby expressly waives any right he may have to sue the United States.

8. The defendant understands that he has the right to appeal the sentence imposed in this case pursuant to 18 U.S.C. § 3742. In exchange for the agreement of the United States as set forth in paragraph 5 above, the defendant hereby waives all rights to appeal the sentence imposed, any aspect of the sentence imposed, or the manner in which the sentence was imposed (including whether or not the sentence was imposed pursuant to the Sentencing Guidelines and including whether or not the Sentencing Guidelines were correctly applied), unless the sentence exceeds the maximum permitted by statute. The defendant further understands that the United States reserves its right to appeal the sentence imposed as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the defendant's sentence, then the defendant shall be released from the above waiver of appellate rights.

STATEMENT OF FACTS

9. The Statement of Facts in this case is true and correct and will be submitted to the Court as evidence.

SENTENCING GUIDELINES STIPULATIONS

10. The United States and the defendant agree and recommend to the Court that the Court apply the Sentencing Guidelines in imposing sentence in this case, and further agree and stipulate as follows:

- a. that the Sentencing Guideline applicable to the offense of conspiracy to commit mail and wire fraud, 18 U.S.C. § 1349, is U.S.S.G. § 2B1.1 (Nov. 2004);
- b. that pursuant to U.S.S.G. § 2B1.1(a), the base offense level is 7;
- c. that pursuant to U.S.S.B. § 2B1.1(b)(1)(N), the offense level is increased by 26 levels to an offense level of 33 because the loss was more than \$100 million but not more than \$200 million, and that pursuant to U.S.S.G. § 1B1.8, any additional loss based upon

information provided by the defendant pursuant to his agreement to cooperate with the United States as set forth in this Plea Agreement shall not be used to increase the applicable Guideline range;

- d. that pursuant to U.S.S.G. § 2B1.1(b)(2)(C), the offense level is increased by 6 levels to an offense level of 39 because the offense involved more than 250 victims;
- e. that pursuant to U.S.S.G. § 3B1.1(b), the offense level is increased by 3 levels to an offense level of 42 because he was a manager or supervisor and the criminal activity involved five or more participants or was otherwise extensive;
- d. that pursuant to U.S.S.G. § 3E1.1(a) and (b), the defendant qualifies for a reduction in his offense level based on acceptance of responsibility as set forth in paragraph 5, above; and
- e. that no determination of any of the factors in U.S.S.G. Chapter 4 regarding criminal history has been made.

11. The stipulations in paragraph 10, above, are not binding on the Court, and the defendant understands that if the Court rejects any of the stipulations, he does not have the right to withdraw his guilty plea.

SUBSTANTIAL ASSISTANCE TO AUTHORITIES

12. Based upon the defendant's substantial assistance which he has already provided in the investigation or prosecution of others who have committed offenses, and conditioned upon his complete, truthful, and continuing cooperation, the United States Attorney agrees to file a motion for a downward departure, pursuant to U.S.S.G. § 5K1.1. Whether and when such a motion may be filed shall be in the sole discretion of the United States Attorney for the Southern District of Ohio. The defendant understands that such a motion, in the event that it is filed, is not binding on the Court. The filing of any motion by the United States Attorney for the Southern District of Ohio regarding substantial assistance will be in reliance on the defendant's continued cooperation. The

defendant acknowledges that if he fails to cooperate as required in this Plea Agreement, the United States Attorney may seek to set aside his guilty plea and proceed against him by way of Indictment.

REPRESENTATION OF COUNSEL

13. The defendant has thoroughly reviewed all aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has received meaningful and satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement, each of his rights affected by this Plea Agreement and the alternatives available to him other than entering into this Plea Agreement. After conferring with counsel, the defendant has concluded that it is in his strategic best interest to enter into this plea agreement in its entirety, rather than to proceed to trial in this case.

VOLUNTARY PLEA

14. This plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this Plea Agreement. There have been no representations or promises from anyone as to what sentence this Court will impose.

VIOLATION OF PLEA AGREEMENT

15. The defendant agrees that if he violates any provision of this Plea Agreement, the United States may declare this Plea Agreement null and void, and the defendant thereafter will be subject to prosecution for any criminal violation including, but not limited to, any crime(s) or offense(s) contained in or related to the Information filed in this case, as well as perjury and obstruction of justice.

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ENTIRETY OF AGREEMENT

16. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

GREGORY G. LOCKHART
United States Attorney

1/23/04
Date

Anne L. Porter
ANNE L. PORTER (SD 2801)
Assistant U.S. Attorney

1/23/04
Date

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AMUL R. THAPAR (0074792)
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1/13/06
Date

Greg J. Cossman
GREG J. COSSMAN
Defendant

1/13/06
Date

Theodore J. Froncek
THEODORE J. FRONCEK, ESQ. (0016116)
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