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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) No. CR 03-
13 Plaintiff,) PLEA AGREEMENT FOR DEFENDANT
14 v.) RICHARD D. MCMULLIN
15 RICHARD D. MCMULLIN,)
16 Defendant.)
17 _____)

18 1. This constitutes the plea agreement between RICHARD
19 MCMULLIN ("defendant") and the United States Attorney's Office
20 for the Central District of California ("the USAO") in the
21 investigation of defendant's participation in a conspiracy to
22 obstruct justice. This agreement is limited to the USAO and
23 cannot bind any other federal, state or local prosecuting,
24 administrative or regulatory authorities.

25 PLEA

26 2. Defendant gives up the right to indictment by a grand
27 jury and agrees to plead guilty to a three-count Information in
28 the form attached to this agreement or a substantially similar

1 form.

2 NATURE OF THE OFFENSE

3 3. The elements of the various offenses to which defendant
4 is pleading guilty are as follows:

5 a) In order for defendant to be guilty of violating
6 Title 18, United States Code, Section 371, as alleged in count
7 one, the following must be true: (1) there was an agreement
8 between defendant and at least one other person to corruptly
9 influence, obstruct, and impede, and to endeavor to influence,
10 obstruct, and impede the due and proper administration of the law
11 under which a pending proceeding was being had before the
12 Securities and Exchange Commission ("SEC"), a department or
13 agency of the United States, in violation of Title 18, United
14 States Code, Section 1505; (2) defendant became a member of the
15 conspiracy knowing of its object and intending to help accomplish
16 it; and (3) one of the members of the conspiracy committed at
17 least one overt act for the purpose of carrying out the
18 conspiracy.

19 b) In order for defendant to be guilty of violating
20 Title 18, United States Code, Section 1001, as alleged in count
21 two, the following must be true: (1) defendant made a false
22 statement in a matter within the jurisdiction of the Federal
23 Bureau of Investigation ("FBI") and the Internal Revenue Service
24 ("IRS"), agencies of the executive branch of the Government of
25 the United States; (2) defendant acted willfully, that is
26 deliberately and with knowledge that the statement was untrue;
27 and (3) the statement was material to the activities or decisions
28 of the FBI and IRS.

1 c) In order for defendant to be guilty of violating
2 Title 18, United States Code, Section 152(2), as alleged in count
3 three, the following must be true: (1) a bankruptcy proceeding
4 was in existence on or about the date alleged in the Information;
5 (2) defendant knowingly and fraudulently made, or caused to be
6 made, a false oral statement in that bankruptcy proceeding or in
7 relation to that bankruptcy proceeding; (3) the false oral
8 statement was made under oath; and (4) the false statement was as
9 to a material fact.

10 Defendant admits that defendant is, in fact, guilty of these
11 offenses as described in counts one through three of the
12 Information.

13 PENALTIES AND RESTITUTION

14 4. The statutory maximum sentences for the offenses to
15 which defendant is pleading guilty are as follows:

16 a) The statutory maximum sentence that the Court can
17 impose for a violation of Title 18, United States Code, Section
18 371 is: five years imprisonment; a three-year period of
19 supervised release; a fine of \$250,000 or twice the gross gain or
20 gross loss resulting from the offense, whichever is greater; and
21 a mandatory special assessment of \$100.

22 b) The statutory maximum sentence that the Court can
23 impose for a violation of Title 18, United States Code, Section
24 1001 is: five years imprisonment; a three-year period of
25 supervised release; a fine of \$250,000 or twice the gross gain or
26 gross loss resulting from the offense, whichever is greater; and
27 a mandatory special assessment of \$100.

28 c) The statutory maximum sentence that the Court can

1 impose for a violation of Title 18, United States Code, Section
2 152 is: five years imprisonment; a three-year period of
3 supervised release; a fine of \$250,000 or twice the gross gain or
4 gross loss resulting from the offense, whichever is greater; and
5 a mandatory special assessment of \$100.

6 e) Therefore, the total maximum sentence for all
7 offenses to which defendant is pleading guilty is: 15 years
8 imprisonment; a three-year period of supervised release; a fine
9 of \$750,000 or twice the gross gain or gross loss resulting from
10 the offenses, whichever is greater; and a mandatory special
11 assessment of \$300.

12 5. Defendant understands that defendant will be required
13 to pay full restitution to the victims of the offense. Defendant
14 agrees that, in return for the USAO's compliance with its
15 obligations under this agreement, the amount of restitution is
16 not restricted to the amount attributable to the counts to which
17 defendant is pleading guilty and may include losses arising from
18 charges not prosecuted pursuant to this agreement as well as all
19 relevant conduct in connection with those charges. Defendant
20 further agrees that defendant will not seek the discharge of any
21 restitution obligation, in whole or in part, in any present or
22 future bankruptcy proceeding. Pursuant to this agreement, the
23 parties agree that restitution shall not exceed \$1.7 million and
24 that defendant shall receive full credit towards his restitution
25 for all cash payments by defendant and his relatives to the
26 Trustee in the matter of In re Reed E. Slatkin, Bk. No. ND 01-
27 11549-RR.

28 6. Supervised release is a period of time following

1 imprisonment during which defendant will be subject to various
2 restrictions and requirements. Defendant understands that if
3 defendant violates one or more of the conditions of any
4 supervised release imposed, defendant may be returned to prison
5 for all or part of the term of supervised release, which could
6 result in defendant serving a total term of imprisonment greater
7 than the statutory maximum stated above.

8 FACTUAL BASIS

9 7. Defendant agrees and stipulates that the allegations
10 set forth in the attached Information accurately describe
11 defendant's criminal conduct in all material respects. Defendant
12 further agrees that the allegations regarding his conduct
13 contained in the Information shall constitute the factual basis
14 for defendant's guilty plea.

15 WAIVER OF CONSTITUTIONAL RIGHTS

16 8. By pleading guilty, defendant gives up the following
17 rights:

18 a) The right to persist in a plea of not guilty.

19 b) The right to a speedy and public trial by jury.

20 c) The right to the assistance of counsel at trial,
21 including, if defendant could not afford an attorney, the right
22 to have the Court appoint one for defendant.

23 d) The right to be presumed innocent and to have the
24 burden of proof placed on the government to prove defendant
25 guilty beyond a reasonable doubt.

26 e) The right to confront and cross-examine witnesses
27 against defendant.

28 f) The right, if defendant wished, to testify on

1 defendant's own behalf and present evidence in opposition to the
2 charges, including the right to call witnesses and to subpoena
3 those witnesses to testify.

4 g) The right not to be compelled to testify, and, if
5 defendant chose not to testify or present evidence, to have that
6 choice not be used against defendant.

7 By pleading guilty, defendant also gives up any and all
8 rights to pursue any affirmative defenses, Fourth Amendment or
9 Fifth Amendment claims, and other pretrial motions that could be
10 filed.

11 SENTENCING FACTORS

12 9. Defendant understands that the Court is required to
13 consider and apply the United States Sentencing Guidelines
14 ("U.S.S.G." or "Sentencing Guidelines") but may depart from those
15 guidelines under some circumstances.

16 10. Defendant and the USAO agree and stipulate to the
17 following applicable sentencing guideline factors:

18 a) Guideline Calculation for Conspiracy to Obstruct Justice

| | | | | |
|----|--------------------|---|----|-------------------------------|
| 19 | Base Offense Level | : | 12 | [U.S.S.G. §§ 2J1.2, 2X1.1(a)] |
| 20 | Specific Offense | | | |
| 21 | Characteristics | | | |
| 22 | Substantial | | | |
| 23 | Interference with | : | +3 | [U.S.S.G. § 2J1.2(b)(2)] |
| | Admin. of Justice | | | |

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1 b) Guideline Calculation for False Statement

2 Base Offense Level : 6 [U.S.S.G. § 2F1.1(a)]
3 Specific Offense
4 Characteristics
5 More than Minimal
6 Planning/Multiple
7 Victims : +2 [U.S.S.G. § 2F1.1(b) (2) (A)]

7 c) Guideline Calculation for False Oath in Bankruptcy

8 Base Offense Level : 12 [U.S.S.G. § 2J1.3(a)]
9 Specific Offense
10 Characteristics
11 Substantial
12 Interference with
13 Admin. of Justice : +3 [U.S.S.G. § 2J1.3(b) (2)]

13 d) Combined Offense Level

14 Highest Applicable
15 Offense Level : 15 [U.S.S.G. § 3D1.4(a)]
16 Multiple Count Adjustment: +3 [U.S.S.G. § 3D1.4]
17 Acceptance of
18 responsibility : -3 [U.S.S.G. § 3E1.1]

18 Combined Offense Level : 15

19
20 The USAO will agree to a downward adjustment for acceptance of
21 responsibility only if the conditions set forth in paragraph 13
22 are met. Defendant and the USAO agree that no other specific
23 offense characteristics or adjustments are appropriate and agree
24 not to argue or suggest that any such specific offense
25 characteristics or adjustments should be imposed. If, however,
26 after signing this agreement but prior to sentencing, defendant
27 were to commit an act, or the USAO were to discover a previously
28 undiscovered act committed by defendant prior to signing this

1 agreement, which act, in the judgment of the USAO, constituted
2 obstruction of justice within the meaning of U.S.S.G. § 3C1.1,
3 the USAO would be free to seek the enhancement set forth in that
4 section. The defendant reserves the right to argue for downward
5 departure. The government agrees not to argue for upward
6 departure and reserves its right to bring a motion for downward
7 departure pursuant to U.S.S.G. § 5K1.1 under the terms and
8 conditions set forth in paragraphs 14-17 below.

9 11. There is no agreement as to defendant's criminal
10 history or criminal history category.

11 12. The stipulations in this agreement do not bind either
12 the United States Probation Office or the Court. The Court will
13 determine the facts and calculations relevant to sentencing.
14 Both defendant and the USAO are free to: (a) supplement the facts
15 stipulated to in this agreement by supplying relevant information
16 to the United States Probation Office and the Court, (b) correct
17 any and all factual misstatements relating to the calculation of
18 the sentence, and (c) argue on appeal and collateral review that
19 the Court's sentencing calculations are not error, although each
20 party agrees to maintain its view that the calculations in
21 paragraph 10 are consistent with the facts of this case.

22 DEFENDANT'S OBLIGATIONS

23 13. Defendant agrees:

24 a) To plead guilty as set forth in this agreement.

25 b) To not knowingly and willfully fail to abide by
26 all sentencing stipulations contained in this agreement.

27 c) To not knowingly and willfully fail to: (i) appear
28 as ordered for all court appearances, (ii) surrender as ordered

1 for service of sentence, (iii) obey all conditions of any bond,
2 and (iv) obey any other ongoing court order in this matter.

3 d) Not to commit any crime.

4 e) To not knowingly and willfully fail to be truthful
5 at all times with Pretrial Services, the U.S. Probation Office,
6 and the Court.

7 f) To pay the applicable special assessment at or
8 before the time of sentencing unless defendant lacks the ability
9 to pay.

10 14. Defendant agrees to cooperate fully with the USAO, the
11 Federal Bureau of Investigation, and the Internal Revenue
12 Service, and, as directed by the USAO, with any federal court
13 (including the federal bankruptcy court and its representatives,
14 the Trustee and the court-approved counsel for the Official
15 Committee of Unsecured Creditors of the Chapter 11 Bankruptcy
16 estate in the matter of In re Reed E. Slatkin, Bk. No. ND 01-
17 11549-RR), any state, local, or foreign court, and any
18 administrative or law enforcement agency. This cooperation
19 requires defendant to:

20 a) Respond truthfully and completely to all questions
21 that may be put to defendant, whether in interviews, before a
22 grand jury, or at any trial or other court proceeding.

23 b) Attend all meetings, grand jury sessions, trials
24 or other proceedings at which defendant's presence is requested
25 by the USAO or compelled by subpoena or court order.

26 c) Produce voluntarily all documents, records, or
27 other tangible evidence relating to matters about which the USAO,
28 or its designee, inquires.

1 of this agreement. Defendant agrees that at the time of
2 sentencing the Court may consider the uncharged conduct in
3 determining the applicable Sentencing Guidelines range, where the
4 sentence should fall within that range, and the propriety and
5 extent of any departure from that range.

6 d) Not to offer as evidence in its case-in-chief in
7 the above-captioned case or any other prosecution that may be
8 brought against defendant by the USAO, any statements made by
9 defendant or tangible evidence provided by defendant pursuant to
10 this agreement. Defendant, however, agrees that the USAO may use
11 such statements and tangible evidence: (1) to obtain and pursue
12 leads to other evidence, which evidence may be used for any
13 purpose, including any prosecution of defendant, (2) to cross-
14 examine defendant should defendant testify, or to rebut any
15 evidence, argument, or representations made by defendant or a
16 witness called by defendant in any trial, sentencing hearing, or
17 other court proceeding, (3) in any prosecution of defendant for
18 false statement, obstruction of justice, or perjury, and (4) at
19 defendant's sentencing. Defendant understands that information
20 provided by defendant pursuant to this agreement will be
21 disclosed to the probation office and the Court.

22 e) In connection with defendant's sentencing, to
23 bring to the Court's attention the nature and extent of
24 defendant's cooperation.

25 f) If the USAO determines, in its exclusive judgment,
26 that defendant has provided substantial assistance to law
27 enforcement in the prosecution or investigation of another
28 ("substantial assistance"), to move the Court pursuant to

1 U.S.S.G. § 5K1.1 to impose a sentence below the sentencing range
2 otherwise dictated by the sentencing guidelines.

3 DEFENDANT'S UNDERSTANDINGS REGARDING SUBSTANTIAL ASSISTANCE

4 16. Defendant understands the following:

5 a) Any knowingly false or misleading statement by
6 defendant will subject defendant to prosecution for false
7 statement, obstruction of justice, and perjury and will
8 constitute a breach by defendant of this agreement.

9 b) Nothing in this agreement requires the USAO or any
10 other prosecuting or law enforcement agency to accept any
11 cooperation or assistance that defendant may offer, or to use it
12 in any particular way.

13 c) Defendant cannot withdraw defendant's guilty plea
14 if the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1
15 for a reduced sentence or if the USAO makes such a motion and the
16 Court does not grant it.

17 d) At this time the USAO makes no agreement or
18 representation as to whether any cooperation that defendant has
19 provided or intends to provide constitutes substantial
20 assistance. The decision whether defendant has provided
21 substantial assistance rests solely within the discretion of the
22 USAO.

23 e) The USAO's determination of whether defendant has
24 provided substantial assistance will not depend in any way on
25 whether the government prevails at any trial or court hearing in
26 which defendant testifies.

27 BREACH OF AGREEMENT

28 17. If defendant, at any time between the execution of this

1 agreement and the completion of defendant's cooperation pursuant
2 to this agreement or defendant's sentencing on a non-custodial
3 sentence or surrender for service of a custodial sentence,
4 whichever is later, knowingly violates or fails to perform any of
5 defendant's obligations under this agreement ("a breach"), the
6 USAO may declare this agreement breached. If the USAO declares
7 the agreement breached, and the Court finds such a breach to have
8 occurred, defendant will not be able to withdraw defendant's
9 guilty plea, and the USAO will be relieved of all its obligations
10 under this agreement. In particular:

11 a) The USAO will no longer be bound by any agreements
12 concerning sentencing and will be free to seek any sentence up to
13 the statutory maximum for the crime to which defendant has
14 pleaded guilty.

15 b) The USAO will no longer be bound by any agreements
16 regarding criminal prosecution, and will be free to prosecute
17 defendant for any crime, including charges that the USAO would
18 otherwise have been obligated not to prosecute pursuant to this
19 agreement.

20 c) The USAO will be free to prosecute defendant for
21 false statement, obstruction of justice, and perjury based on any
22 knowingly false or misleading statement by defendant.

23 d) The USAO will no longer be bound by any agreement
24 regarding the use of statements, tangible evidence, or
25 information provided by defendant, and will be free to use any of
26 those in any way in any investigation, prosecution, or civil or
27 administrative action. Defendant will not be able to assert
28 either (1) that those statements, tangible evidence, or

1 information were obtained in violation of the Fifth Amendment
2 privilege against compelled self-incrimination, or (2) any claim
3 under the United States Constitution, any statute, Rule 11(f) of
4 the Federal Rules of Criminal Procedure, Rule 410 of the Federal
5 Rules of Evidence, or any other federal rule, that statements,
6 tangible evidence, or information provided by defendant before or
7 after the signing of this agreement, or any leads derived
8 therefrom, should be inadmissible.

9 18. Following a knowing and willful breach of this
10 agreement by defendant, should the USAO elect to pursue any
11 charge that was not filed as a result of this agreement, then:

12 a) Defendant agrees that any applicable statute of
13 limitations is tolled between the date of defendant's signing of
14 this agreement and the USAO's discovery of any knowing and
15 willful breach by defendant.

16 b) Defendant gives up all defenses based on the
17 statute of limitations, any claim of preindictment delay, or any
18 speedy trial claim with respect to any such prosecution, except
19 to the extent that such defenses existed as of the date of
20 defendant's signing of this agreement.

21 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

22 19. Defendant gives up the right to appeal any sentence
23 imposed by the Court, including any order of restitution, and the
24 manner in which the sentence is determined, provided that (a) the
25 sentence is within the statutory maximum specified above and is
26 constitutional, (b) the Court does not depart upward in offense
27 level or criminal history category, and (c) the Court determines
28 that the total offense level is 15 or below and imposes a

1 statutory maximum.

2 22. This agreement applies only to crimes committed by
3 defendant, has no effect on any proceedings against defendant not
4 expressly mentioned herein, and shall not preclude any past,
5 present, or future forfeiture actions.

6 NO ADDITIONAL AGREEMENTS

7 23. Except as set forth herein, there are no promises,
8 understandings or agreements between the USAO and defendant or
9 defendant's counsel. Nor may any additional agreement,
10 understanding or condition be entered into unless in a writing
11 signed by all parties or on the record in court.

12 This agreement is effective upon signature by defendant and
13 an Assistant United States Attorney.

14 AGREED AND ACCEPTED

15 UNITED STATES ATTORNEY'S OFFICE
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 DEBRA W. YANG
18 United States Attorney

19 _____ Date _____
20 STEVEN J. OLSON
21 MICHAEL WILNER
22 Assistant United States Attorneys

23 I have read this agreement and carefully discussed every
24 part of it with my attorney. I understand the terms of this
25 agreement, and I voluntarily agree to those terms. My attorney
26 has advised me of my rights, of possible defenses, of the
27 Sentencing Guideline provisions, and of the consequences of
28 entering into this agreement. No promises or inducements have
been made to me other than those contained in this agreement. No

1 one has threatened or forced me in any way to enter into this
2 agreement. Finally, I am satisfied with the representation of my
3 attorney in this matter.

4

5 RICHARD D. MCMULLIN Date
6 Defendant

7 We are Richard D. McMullin's attorneys. We have carefully
8 discussed every part of this agreement with our client. Further,
9 we have fully advised our client of his rights, of possible
10 defenses, of the Sentencing Guideline provisions, and of the
11 consequences of entering into this agreement. To our knowledge,
12 our client's decision to enter into this agreement is an informed
13 and voluntary one.

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15 ROBERT S. BREWER, JR. Date
16 ROBERT J. LAUHLAN, JR.
17 Counsel for Defendant
18 Richard McMullin

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