

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FILED  
U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION  
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SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ROBERT ANDREW PENN, )  
 )  
 Defendant. )

Cause No. 1:09-CR-114-DFH-KPF-01

**PLEA AGREEMENT**

The United States of America, by counsel: Timothy M. Morrison, United States Attorney for the Southern District of Indiana, and Susan H. Dowd, Assistant United States Attorney; Leonardo M. Rapadas, United States Attorney for the Districts of Guam and the Northern Mariana Islands, and Eric O'Malley, Assistant United States Attorney; and the Defendant, ROBERT ANDREW PENN (hereinafter, PENN), in person and by counsel, Timothy J. Burns, hereby inform the Court that a Plea Agreement has been reached in this cause, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(b), and the following are its terms and conditions:

1. PENN will plead guilty to all three counts of the Indictment, which charge him with the following: Conspiracy to Commit Wire Fraud, in violation of Title 18, United States Code, Section 371, a felony offense which may be punished by a prison term of not more than five (5) years, a fine of not more than \$250,000.00, and a term of supervised release of not more than three years following any term of imprisonment (Count One); Wire Fraud, in violation of Title 18, United States Code, Section 1343, a felony offense which may be punished by a prison

term of not more than twenty (20) years, a fine of not more than \$250,000.00, and a term of supervised release of not more than three years following any term of imprisonment (Count Two); and Money Laundering Conspiracy, in violation of Title 18, United States Code, Section 1956(h), a felony offense which may be punished by a prison term of not more than ten (10) years, a fine of not more than \$250,000.00, and a term of supervised release of not more than three years following any term of imprisonment (Count Three).

2. Title 18, United States Code, Section 371 (Conspiracy to Commit Wire Fraud) consists of the following elements:

- A. That the conspiracy as charged in Count One existed;
- B. That the defendant knowingly became a member of the conspiracy with an intention to further the conspiracy; and
- C. That an overt act was committed by at least one conspirator in furtherance of the conspiracy.

Title 18, United States Code, Section 1343 (Wire Fraud) consists of the following elements:

- A. The defendant knowingly devised or participated in the scheme to defraud or to obtain money or property by means of false pretenses, representations or promises as described in Count Two of the Indictment;
- B. The defendant did so knowingly and with the intent to defraud;
- C. For the purposes of carrying out the scheme or attempting to do so, the defendant used or caused interstate wire communications to take place in the manner charged in Count Two of the Indictment.

Title 18, United States Code, Section 1956(h) (Money Laundering Conspiracy) consists of the following elements:

- A. That the defendant was knowingly involved with two or more people for the purpose of money laundering;
- B. That the defendant engaged in or attempted to engage in a monetary transaction with the proceeds of an illegal activity;
- C. That the defendant knew that the transaction involved criminally derived property;
- D. That the property involved in the transaction had a value greater than \$10,000.

3. PENN agrees and understands that the Court will use its discretion to fashion a sentence within the statutory range set forth in Paragraph 1. PENN agrees and understands that the Court will consider the factors set forth in Title 18, United States Code, Section 3553(a) in determining the appropriate sentence within the statutory range. PENN agrees and understands that the Court will also consult and take into account the United States Sentencing Guidelines ("Sentencing Guidelines" or "U.S.S.G.") in determining the appropriate sentence within the statutory range. PENN agrees and understands that the Sentencing Guidelines are not mandatory or binding on the Court, but are advisory in nature. PENN agrees and understands that the final determination of the sentence, including the applicable advisory guidelines calculation, criminal history category, and advisory sentencing guidelines range will be made by the Court.

4. PENN acknowledges that this plea agreement is governed by Federal Rule of Criminal Procedure 11(c)(1)(B) and that the determination of his sentence is within the discretion of the Court. PENN understands that if the Court decides to impose a sentence higher or lower than any recommendation of either party, or determines a different advisory sentencing guideline range applies in this case, then PENN will not be permitted to withdraw his plea of guilty for that reason and will be bound by his plea of guilty. PENN agrees and understands that the Court will

use its discretion to fashion a sentence within the statutory range set forth in Paragraph 1. PENN agrees and understands that the Court will consider the factors set forth in Title 18, United States Code, Section 3553(a) in determining the appropriate sentence within the statutory range. PENN agrees and understands that the Court will also consult and take into account the United States Sentencing Guidelines (“Sentencing Guidelines” or “U.S.S.G.”) in determining the appropriate sentence within the statutory range. PENN agrees and understands that the Sentencing Guidelines are not mandatory or binding on the Court, but are advisory in nature. PENN agrees and understands that the final determination of the sentence, including the applicable advisory guidelines calculation, criminal history category, and advisory sentencing guidelines range will be made by the Court.

5. PENN agrees to pay a total of \$300.00 on the date of the sentencing to the Clerk, United States District Court, which amount represents the mandatory special assessment fee imposed, pursuant to Title 18, United States Code, Section 3013.

6. PENN agrees to provide all requested financial information to the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of Indiana for use in the collection of any fines or restitution imposed by the Court.

7. PENN acknowledges and agrees that nothing in this agreement shall protect him in any way from prosecution for any offense not specifically covered by this agreement. The United States Attorney’s Office for the Southern District of Indiana agrees not to bring any other charges against PENN regarding the facts and circumstances set forth in the Indictment. In addition, in return for the defendant’s plea to all counts of the pending Indictment and his cooperation as noted below, the United States Attorney’s Office for the Districts of Guam and

the Northern Mariana Islands agrees to bring no federal charges against PENN with respect to PENN's involvement in the manufacture or presentment of a \$200 million counterfeit Secured Funding and Offset Bond in Saipan, Commonwealth of the Northern Mariana Islands, in 2008-2009.

8. In return for PENN's plea to all counts of the Indictment, the United States Attorney's Office for the Southern District of Indiana further agrees not to bring any charges against PENN's mother, Beulah Penn, or PENN's sister, Sharon Denise Penn, regarding the facts and circumstances set forth in the Indictment.

9. At the time of sentencing, the government and PENN will recommend to the Court that the Court impose a sentence within the advisory sentencing guidelines range which the Court finds applicable to PENN.

10. The government agrees not to oppose any request made by PENN for a Court recommendation that PENN serve any period of imprisonment in a specific facility. PENN acknowledges and understands that any Court recommendation does not bind the United States Bureau of Prisons.

11. PENN agrees to cooperate with the United States of America, including, but not limited to:

a. Complete, total, and truthful debriefings concerning any and all information regarding the involvement of PENN and others in mortgage fraud and other offenses, without restriction to the Southern District of Indiana, or to any charge presently pending against PENN;

b. Complete, total, and truthful debriefings concerning any and all information regarding the involvement of PENN and others in the manufacture and presentment of a \$200 million counterfeit Secured Funding and Offset Bond in Saipan, Commonwealth of the Northern Mariana Islands, in 2008 and 2009;

c. Complete, total, and truthful testimony before grand juries and at trials, as deemed necessary by the United States, concerning any and all information provided by PENN during the course of his debriefings.

This cooperation agreement extends beyond the Southern District of Indiana, the District of Guam and the District of the Northern Mariana Islands, to the extent any other judicial district agrees to accept the terms of this Plea Agreement.

If PENN has not completed his cooperation at the time of sentencing, he recognizes that his obligation to cooperate continues. The parties recognize that PENN's refusal to complete this cooperation agreement will be deemed by the United States to be a breach of this Plea Agreement.

The government and PENN recognize that the truthful information and testimony PENN provides pursuant to this agreement will not be used to bring criminal charges against him with the following exceptions:

- a. Prosecution in this case;
  - b. If PENN were to testify falsely before any grand jury or at any trial, he could be prosecuted for false statements before a grand jury or perjury, whichever is appropriate;
- and,

c. PENN could be prosecuted for any actions which resulted, directly or indirectly, in physical injury to another individual.

12. The parties agree that if any party to this Plea Agreement believes that another party is not abiding by the terms of this Plea Agreement, that party will request the Court to determine whether the terms of the Plea Agreement have been breached before any party or specified district takes unilateral action. In a proceeding to determine whether a breach has occurred, any disclosures, documents or other items provided by PENN shall be admissible and the government may, in order to establish any breach by him, rely on any statements and evidence given by him during the cooperation phase of this agreement. If the Court determines that PENN has breached the terms of this Plea Agreement, the obligations of the government in this Plea Agreement become null and void. If the obligations of the government become null and void, it is expressly agreed that:

a. PENN will not be permitted to withdraw his pleas of guilty to the offenses described above;

b. Any and all additional charges against PENN known to the government may be filed, without regard to any restrictions set forth in this agreement;

c. The government may argue for a maximum sentence for the offenses to which PENN has pleaded guilty.

13. PENN understands that he has a statutory right to appeal the conviction and sentence imposed and the manner in which the sentence was determined. Acknowledging this right and in exchange for the concessions made by the United States in this plea agreement, PENN agrees that in the event the Court sentences PENN to a sentence within or below the

advisory sentencing guidelines range the Court finds applicable to him, PENN expressly waives his right to appeal the conviction and sentence imposed on any ground, including the right to appeal conferred by Title 18, United States Code, Section 3742. Additionally, PENN also expressly agrees not to contest his sentence or the manner in which it was determined in any collateral attack, including but not limited to, an action brought under Title 28, United States Code, Section 2255.

### SENTENCING GUIDELINES STIPULATIONS

14. Pursuant to Section 6B1.4 of the Sentencing Guidelines, the parties agree to the stipulations below. The parties understand and agree that these stipulations are binding on the parties but are only a recommendation to the Court and that the Court will determine the advisory sentencing guidelines applicable in this case. PENN understands that he may not revoke his plea of guilty merely because the Court fails to follow the stipulations of the parties. The parties agree that no stipulation regarding any factors in Chapter 4, Criminal History Category, of the Sentencing Guidelines has been made, and that such determination will be made by the Court.

A. The government and PENN agree that the grouping rules under Sentencing Guidelines Section 3D1.2 and 3D1.3 apply as follows: Counts 1 and 2 group pursuant to Section 3D1.2(b); Counts 1 and 2 then group with Count 3 pursuant to Section 3D1.2(b), and the total offense level is the highest offense level of the counts in the Group (here, the money laundering offense guideline governing Count 3).

#### Counts 1 and 2

B. The government and PENN agree that the base offense level is seven (7), pursuant to Section 2B1.1(a)(1).

C. The government and PENN agree that the base offense level should be increased by eighteen (18) levels, pursuant to Section 2B1.1(b)(1)(J), because the amount of the loss is more than \$2,500,000.00, but less than \$7,000,000.00.

D. The government and PENN agree that the adjusted offense level for Count 1 is twenty-five (25).

### Count 3

E. The government and PENN agree that the base offense level is twenty-five (25), pursuant to Section 2S1.1(a)(1), the offense level for the underlying offense from which the laundered funds were derived.

F. The government and PENN agree that the base offense level should be increased by two (2) levels, pursuant to Section 2S1.1(b)(2)(B), because the defendant was convicted under Title 18, United States Code, Section 1956.

G. The government and PENN agree that the adjusted offense level for Count 2 is twenty-seven (27).

### Grouping

H. The government and PENN agree that the adjusted offense level for all counts is therefore twenty-seven (27), pursuant to Section 3D1.1(a) and subparagraph 15A above.

### Role in the Offense

I. The government will recommend that the base offense level be increased by four (4) levels, pursuant to Section 3B1.1(a), because the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; PENN is free to argue that this section does not apply.

### Acceptance of Responsibility

J. The government and PENN agree that, to date, PENN has demonstrated an acceptance of responsibility for his offense. In the event he continues to accept responsibility, he is entitled to a decrease from the base offense level of two (2) levels, pursuant to Section 3E1.1(a).

K. The government and PENN agree that, by entering into this plea agreement and filing a petition to enter a plea of guilty in this case, PENN has timely notified authorities of his intention to enter a plea of guilty, and has thereby permitted the United States to avoid preparing for trial and permitted the United States to allocate its resources effectively. In the event PENN continues to accept responsibility, at the time of sentencing, the United States will file a motion

that informs the Court of the same, thereby enabling the Court to decrease PENN's offense level by one additional level, pursuant to Section 3E1.1(b).

### FINAL PROVISIONS

PENN acknowledges that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this document, to induce PENN to plead guilty. This document is the complete and only plea agreement between PENN, the United States Attorney for the Southern District of Indiana, and the United States Attorney for the District of Guam, and is binding only on the parties to this agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified except in writing, signed by all parties and filed with the Court, or on the record in open court.

The terms of this agreement shall not be binding on the United States Attorney's Office for the Southern District of Indiana, or the United States Attorney's Office for the Districts of Guam and the Northern Mariana Islands, or upon PENN until signed by PENN and his counsel and by all listed counsel for the United States of America.

10/1/09

DATE

Susan H. Dowd

Timothy M. Morrison, United States Attorney  
Southern District of Indiana

By: Susan H. Dowd, Assistant United States Attorney


10/1/09

DATE

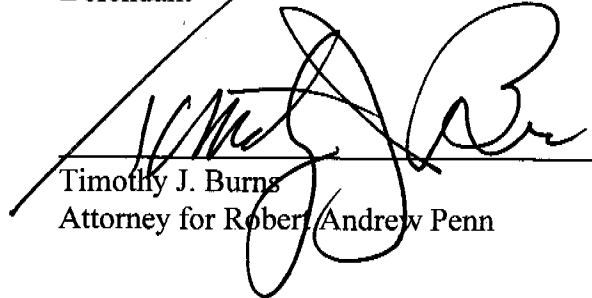
Christina McKee

Christina McKee  
Chief, Criminal Division

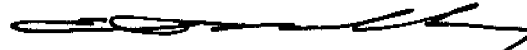
9/30/09  
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Robert Andrew Penn  
Defendant

9/30/09  
DATE

  
\_\_\_\_\_  
Timothy J. Burns  
Attorney for Robert Andrew Penn

9/29/09  
DATE



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Leonardo Rapadas, United States Attorney  
Districts of Guam and the Northern Mariana Islands

By: Eric O'Malley, AUSA

**STATEMENT OF THE DEFENDANT**

I have read the entire Plea Agreement and discussed it with my attorney.

I understand all the terms of the Plea Agreement and those terms correctly reflect the results of plea negotiations.

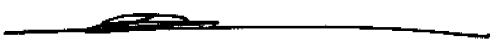
I am fully satisfied with my attorney's representation during all phases of this case.

I am freely and voluntarily pleading guilty in this case.

I am pleading guilty as set forth in this Plea Agreement because I am guilty of the crimes to which I am entering my plea.

My attorney has informed me, and I understand, that I have the right to appeal any conviction and sentence that I receive, unless I have waived my right to appeal as part of this Plea Agreement. If I have not waived my right to appeal, I understand that I must file a Notice of Appeal within ten (10) days of the entry of the judgment in this case; I further understand that the Clerk of the Court will prepare and file a Notice of Appeal on my behalf if I ask that to be done. I also understand that the United States has the right to appeal any sentence that I receive under this Plea Agreement.

9/26/09  
DATE

  
Robert Andrew Penn  
Defendant