

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

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BY D. MARK JONES, CLERK DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No. 2:11-cr-00543-TS
Plaintiff,	:	
vs.	:	STATEMENT BY DEFENDANT IN ADVANCE OF PLEA OF GUILTY
WAYNE REED OGDEN,	:	
Defendant.	:	Judge Ted Stewart Magistrate Judge Paul M. Warner

I hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights, and that I have had the assistance of counsel in reviewing, explaining, and completing this form:

1. As part of this agreement with the United States, I intend to plead guilty to Counts 1 and 3 of the Second Superseding Indictment. My attorney has explained the nature of the charges against me, and I have had an opportunity to discuss the nature of the charges with my attorney. I understand the charges and what the government is required to prove in order to convict me.

The elements of Count 1 of the Second Superseding Indictment, in violation of 18 U.S.C. § 1343 (Wire Fraud), are:

- First, that there was a scheme or artifice to defraud or a scheme to obtain money or property by means of materially false pretenses, representations, or promises as alleged in the Second Superseding Indictment;

- Second, I knowingly and willfully participated in the scheme or artifice to defraud with knowledge of its fraudulent nature and with specific intent to defraud; and
- Third, that in execution or furtherance of that scheme, I used or caused the use of interstate wire transmissions as specified in the Second Superseding Indictment.

The elements of Count 3 of the Second Superseding Indictment, in violation of 15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R. § 240.10b-5 (Securities Fraud), are:

- First, in connection with the purchase or sale of a security, I did one or more of the following:
  - \* employed a device, scheme, or artifice to defraud;
  - \* made an untrue statement of a material fact or omitted to state a material fact which made what was said, under the circumstances, misleading; or
  - \* engaged in an act, practice, or course of business that operated, or would operate, as a fraud or deceit upon a purchaser.
- Second, I acted willfully, knowingly, and with the intent to defraud; and
- Third, I knowingly used, or caused to be used, any means or instruments of transportation or communication in interstate commerce or the mails in furtherance of the fraudulent conduct.

2. I know that the maximum possible penalty provided by law for each of the following counts are:

- Count 1 of the Second Superseding Indictment, a violation of 18 U.S.C. § 1343 (Wire Fraud), is a term of imprisonment of twenty (20) years, a fine of \$250,000.00, and a term of supervised release of three (3) years; and
- Count 3 of the Second Superseding Indictment, a violation of 15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R. § 240.10b-5 (Securities Fraud), is a term of imprisonment of twenty (20) years, a fine of \$5,000,000.00, and a term of supervised release of three (3) years.

I understand that if the supervised release term is violated, I can be returned to prison for the length of time provided in 18 U.S.C. § 3583(e)(3). Additionally, I know the Court is required to impose an assessment in the amount of \$100.00 for each offense

of conviction pursuant to 18 U.S.C. § 3013. Furthermore, restitution to any victims of my offense shall be ordered pursuant to 18 U.S.C. § 3663A.

3. I know that the sentencing procedures in this case and the ultimate sentence will be determined pursuant to 18 U.S.C. § 3553(a), and that the Court must consider, but is not bound by, the United States Sentencing Guidelines, in determining my sentence. I have discussed these procedures with my attorney. I also know that the final calculation of my sentence by the Court may differ from any calculation the United States, my attorney, or I may have made, and I will not be able to withdraw my plea for that reason. However, because my plea of guilty is being entered pursuant to Rule 11(c)(1)(C), as explained below, I know that I will be able to withdraw my plea if the Court does not agree to the Rule 11(c)(1)(C) agreement.

4. I know that I can be represented by an attorney at every stage of the proceeding, and I know that if I cannot afford an attorney, one will be appointed to represent me.

5. I know that I have a right to plead "Not Guilty," and I know that if I do plead "Not Guilty", I can have a trial.

6. I know that I have a right to a trial by jury, and I know that if I stand trial by a jury:

- (a) I have a right to the assistance of counsel at every stage of the proceeding.
- (b) I have a right to see and observe the witnesses who testify against me.
- (c) My attorney can cross-examine all witnesses who testify against me.
- (d) I can call witnesses to testify at trial, and I can obtain subpoenas to require the attendance and testimony of those witnesses. If I cannot afford to pay for the appearance of a witness and mileage fees, the government will pay them.
- (e) I cannot be forced to incriminate myself, and I do not have to testify at any trial.
- (f) If I do not want to testify, the jury will be told that no inference adverse to me may be drawn from my election not to testify.
- (g) The government must prove each and every element of the offense charged against me beyond a reasonable doubt.

- (h) It requires a unanimous verdict of a jury to convict me.
- (i) If I were to be convicted, I could appeal, and if I could not afford to appeal, the government would pay the costs of the appeal, including the services of appointed counsel.

7. If I plead guilty, I will not have a trial of any kind.

8. I know that 18 U.S.C. § 3742(a) sets forth the circumstances under which I may appeal my sentence. However, fully understanding my right to appeal my sentence, and in consideration of the concessions and/or commitments made by the United States in this plea agreement, I knowingly, voluntarily, and expressly waive my right to appeal as set forth in paragraph 12(a)(2) below.

9. I know that the United States may appeal only if the acceptance of the plea and sentence is contrary to terms of the plea agreement entered pursuant to Rule 11(c)(1)(C) and that 18 U.S.C. § 3742(c)(2) otherwise sets forth the circumstances under which the United States may appeal my sentence.

10. I know that under a plea of guilty the judge may ask me questions under oath about the offense. The questions, if asked on the record and in the presence of counsel, must be answered truthfully and, if I give false answers, I can be prosecuted for perjury.

11. I stipulate and agree that the following facts accurately describe my conduct. These facts provide a basis for the Court to accept my guilty plea:

From September 2005 to September 2006 (the "fraud period"), I devised and executed a plan to defraud and to obtain money from investors by means of pretenses, representations, and omissions which I knew were false and misleading. As of September 2005, I was on parole with the State of Utah stemming from a 1998 conviction for running a real estate Ponzi scheme ("prior conviction"). As part of my parole restrictions, I was prohibited from participating in, directly and indirectly, the solicitation of investment funds without written authorization from Utah Adult Probation and Parole ("AP&P"). In addition, as further part of my parole restrictions, I was prohibited from participating in, directly and indirectly, any activities relating to investments in real property. Steve Despain was my AP&P parole officer throughout the fraud period. Despite the foregoing circumstances, I knowingly participated in investment activities involving real property throughout the fraud period and misled Officer Despain into believing that I was in compliance with my parole restrictions.

As part of my parole restrictions, I knew I was prohibited from forming a company to pursue investments activities. I therefore recruited my brother, Terry Ogden ("Terry"), to form Paradigm Acceptance, LLC ("Paradigm"), a Nevada

limited liability company, and serve as its primary owner and managing member. I also directed Terry to open a business bank account under Paradigm. My wife, A.S., was a Paradigm member but performed only minimal services for the company. Although Terry and A.S. were Paradigm's members "on paper," Paradigm was my company and I operated, controlled, and managed it throughout the fraud period. Although Terry knew about my parole restrictions, he agreed to form Paradigm and act as a nominee under my control and direction. In order to conceal my involvement with Paradigm, I misrepresented to Officer Despain that I worked for Terry and that my Paradigm duties were limited to finding potential Paradigm clients and referring them to other Paradigm employees. I did so knowing if Officer Despain knew the truth, he would have taken steps immediately to terminate and shut down my continued involvement with Paradigm.

As part of the scheme to defraud, I created the following business plan: (1) finding financially distressed homeowners (i.e., with significant personal debt and difficulties meeting their monthly mortgage payment); (2) negotiating their personal debts and/or mortgages; (3) using investor money to pay off negotiated personal debts and/or mortgages; (4) securing refinancing for homeowners; and (5) requiring from homeowners a fixed fee (\$1,500) plus a percentage of money saved by virtue of Paradigm's negotiation efforts. Throughout the fraud period, I, or others acting at my direction (including Terry), solicited investors to invest in the foregoing business plan, promising returns ranging from 20 percent over a two to four-week period to as much as 100 percent over several days. Investors also were told that their investments involved little or no risk because they were secured by homeowner properties.

As further part of the scheme to defraud:

- I concealed from investors my prior conviction and current parole restrictions prohibiting me from participating in any investment activities, including those involving real estate, knowing investors would not likely invest with Paradigm if they knew about my criminal history and parole restrictions.
- At times, I prepared and provided investors with promissory notes reflecting investment amounts plus interest, often forging homeowners' signatures and creating false notarizations. Along similar lines, I also prepared and provided investors with warranty deeds purportedly securing the foregoing promissory notes against homeowner properties in the event of default, often forging homeowners' signatures and creating false notarizations. Moreover, I knew that some investments in Paradigm were collateralized by the same homeowner property and therefore provided those investors with a false sense of comfort and security when making their investment decisions.

- I, or others acting at my direction (including Terry), told investors that their investment funds would be used solely for the purpose of paying off homeowner debts (i.e., personal, mortgage, or both) negotiated by Paradigm. I, or others acting at my direction, also told investors that returns (principal and interest) on their investments would be funded by homeowner refinancing.
- Rather than using investor funds as intended and promised, I, or others acting at my direction, diverted and used those funds to pay prior investors (also known as “Ponzi payments”), to pay for my and Terry’s personal expenses, and to pay Paradigm’s business expenses, including employee payroll. I knew that Ponzi payments to investors would and did create a false and misleading impression of a successful business and a safe investment. I also knew that “successful” investors would and did serve as an effective marketing tool for Paradigm to entice new investors. Finally, I knew that Paradigm used only a minimal amount (i.e, less than five percent) of investor funds to pay off homeowner debts.
- Beginning in May 2006, Paradigm began receiving complaints from investors who had not been paid returns and were demanding the return of their principal. I, along with Terry, responded to this situation primarily in two ways. First, at times, we issued checks to investors knowing they would be returned for insufficient funds and would not be honored until Paradigm received funds from new investors. Second, we provided investors with false excuses, blaming the delayed returns on bank errors, failures in the fedwire system, and delayed loan refinancings.
- From June to September 2006, I, along with Terry, continued to solicit new investments into Paradigm under false and fraudulent pretenses. Specifically, we continued to conceal my prior conviction and parole restrictions. We misrepresented to investors that their money would be used solely to pay off homeowner debt, knowing that investor funds would be diverted primarily to make Ponzi payments to prior investors.

On or about September 12, 2006 and in furtherance and execution of the above scheme to defraud, I, along with Terry, caused S.W. to wire transfer \$81,000 from his bank account in Nevada to Paradigm’s bank account in Utah. In connection with S.W.’s investment, we provided S.W. with a promissory note and assignment signed by Terry. These documents were intended to provide S.W. with a false sense of security and assurance that his investment would be protected in the event of default on the note. In truth and fact, the assignment provided S.W. with no legal interest in the Michigan property identified therein. Indeed, Paradigm had no legal interest to assign in the Michigan property and had taken no steps to secure such an interest sufficient to protect S.W.’s investment. Finally, on September 12, 2006, following Paradigm’s receipt of S.W.’s \$81,000, I caused to

be issued to 435 Funding (a prior investor in Paradigm) a cashier's check for \$72,000. Additionally, on September 13, 2006, I caused to be issued to 435 Funding, a cashier's check for \$5,000. I knew at the time both of these checks were issued that S.W.'s money was being used to make Ponzi payments, contrary to what S.W. had intended and understood concerning the use of his investment funds - - i.e., solely to pay off homeowner debt.

The above acts occurred in the District of Utah and elsewhere.

12. The only terms and conditions pertaining to this plea agreement between the defendant and the United States are as follows:

- (a) The defendant agrees as follows:
  - (1) I will plead guilty to Counts 1 and 3 of the Second Superseding Indictment.

#### **Appellate Waiver**

- (2)(a) Fully understanding my limited right to appeal my sentence, as referenced above in paragraph 8, and in consideration of the concessions and/or commitments made by the United States in this plea agreement, I knowingly, voluntarily, and expressly waive my right to appeal any sentence imposed upon me, except that I do not waive the right to appeal as set forth in 18 U.S.C. § 3742(c)(1), which states that I may not file a notice of appeal unless the sentence imposed is greater than the sentence set forth in this agreement;
- (2)(b) I also knowingly, voluntarily, and expressly waive my right to challenge my sentence, except as set forth in paragraph (3)(a) above, in any collateral review motion, writ or other procedure, including but not limited to a motion brought under 28 U.S.C. § 2255, except on the issue of counsel's ineffective assistance in negotiating or entering this plea or this waiver as set forth in *United States v. Cockerham*, 237 F.3d 1179, 1187 (10<sup>th</sup> Cir. 2001);
- (2)(c) I understand that this waiver of my appeal and collateral review rights concerning my sentence shall not affect the government's right to appeal my sentence pursuant to 18 U.S.C. §§ 3742(c)(2), (b)(1), and (b)(2); and

- (2)(d) I further understand and agree that the word “sentence” appearing throughout this waiver provision is being used broadly and applies to all aspects of the Court’s sentencing authority, including, but not limited to the imposition of imprisonment, fines, supervised release, probation (and any specific terms and conditions thereof), and any orders of restitution.
- (3) To prepare my Pre-Sentence Report, I acknowledge that the United States Probation Office will ask me to complete the “Probation 48 Financial Packet” and to provide supporting documentation for the representations I make therein. I agree to truthfully and accurately complete the “Probation 48 Financial Packet” and to provide a copy of it and all supporting documentation attached thereto to the United States Probation Office and to the United States Attorney’s Office within **three weeks** of my change of plea. I also consent to allowing the United States Attorney’s Office to run a credit check on me. I understand that providing false or incomplete information or refusing to provide this information may be used as a basis for a separate prosecution under 18 U.S.C. § 1001.
- (4) I consent to the Probation Office or the United States Attorney’s Office obtaining a report of my credit record and using the information from that report in preparing the Presentence Report, at sentencing, or in any subsequent action, proceeding, or hearing related to the present action.

### **Restitution**

- (5) I agree that, pursuant to the provisions of 18 U.S.C. § 3663A(a)(1) and (c)(1)(A)(ii), in the event the Court determines that restitution is owed to any victims of my offense, I am obligated to make restitution and the Court is obligated to order that I pay it. I understand and agree that the Court will determine at sentencing the final amount of restitution, if any, I must pay. In addition:
- (a) I understand that the amount of restitution will be determined as a part of the sentencing proceedings in accordance with the provisions of 18 U.S.C. § 3664. I agree to pay all restitution as ordered by the Court. I understand the payment of restitution is governed by 18 U.S.C. § 3664, and my lawyer has

explained the consequences of an order of restitution.

- (b) I agree to pay restitution during any period of incarceration imposed on me as determined by the Court. I understand and agree that payment of any restitution owed should be a condition of any term of probation or supervised release imposed upon me. I know that if I fail to pay, the failure can be considered a violation of probation or supervised release and, pursuant to 18 U.S.C. § 3614, the Court can resentence me to any sentence which might originally have been imposed in my case.
  - (c) I agree that I will not seek the discharge of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding.
- (6) To help me meet my obligations to pay restitution, if any, and/or a fine, I consent to being placed on the Treasury Offset Program and State Finder.
  - (7) I understand that if I knowingly violate any local, state or federal law between now and the time of my sentencing, such offense may constitute a violation of this plea agreement. I also understand that the Court will decide whether a violation of the plea agreement has occurred. If the Court finds that I have breached this agreement by violating any law, I understand that the Court may relieve the government of all obligations and commitments in this plea agreement while leaving intact my plea of guilty.
- (b) The United States agrees as follows:
    - (1) To dismiss Count 2 of the Second Superseding Indictment at the time of sentencing.
  - (c) The United States and the defendant agree as follows:
    - (1) Restitution in this case totals an amount no less than \$3,585,488.04.
    - (2) Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the sentence imposed by the Court will be 120 months with the Bureau of Prisons, and further agree that 120 months is

a reasonable sentence.

- (3) The United States and the defendant understand that this agreement, including the defendant's plea, the agreed upon sentence, and all other terms referenced herein, are subject to the approval of, and acceptance by the Court. The defendant and the United States further understand that the Court will likely order the preparation of a Presentence Report to assist in the determination of whether this plea and the agreement are appropriate, and the parties agree to fully cooperate in the preparation of the Presentence Report.
- (4) If, after receiving all relevant information, the Court rejects the plea agreement and determines that a sentence different from the agreed upon sentence of 120 months will be imposed, the defendant will have the right to withdraw the plea of guilty and the terms of this agreement will become null and void. Likewise, if the Court rejects the plea agreement and determines that the sentence should be less than 120 months, the United States will have the right to move to vacate this agreement, and the terms of this agreement will become null and void.
- (5) The United States and the defendant agree that all other sentence provisions (e.g., supervised release, restitution, assessments, etc.) will be imposed in accordance with applicable law.
- (6) In the event the Court approves and accepts the agreed upon sentence of 120 months, the defendant and the United States agree to recommend such sentence run concurrent with the sentence imposed in the case styled, *United States v. Wayne Reed Ogden*, Case No. 2:07-cr-00900-CW ("Case 900"). Defendant is currently awaiting sentencing in Case 900. If, after receiving all relevant information, the Court rejects the parties' request for a concurrent sentence with Case 900, the defendant will have the right to withdraw the plea of guilty and the terms of this agreement will become null and void.
- (7) The United States and the defendant agree to recommend to the Court in Case 900 a sentence of 120 months with the Bureau of Prisons and that such sentence run concurrent with the sentence in this case. In the event the

Court in Case 900 does not follow the parties' recommendation of 120 months, the defendant understands this will not be a basis upon which to withdraw his plea in the present action.

- (8) The United States and the defendant agree to the withdrawal of all pending motions in Case 900, including, but not limited to, the defendant's motions for mistrial and motion for new trial.
- (9) The United States and the defendant agree to recommend to the Court in Case 900 that restitution totals an amount no less than \$4,860,000.

\* \* \* \*

I make the following representations to the Court:

1. I am 49 years of age. My education consists of some college. I can read and understand English.
2. This Statement in Advance contains all terms of the agreements between me and the government; if there are exceptions, the Court will be specifically advised, on the record, at the time of my guilty plea of the additional terms. I understand the government and I cannot have terms of this plea agreement that are not disclosed to the Court.
3. No one has made threats, promises, or representations to me that have caused me to plead guilty.
4. Neither my attorney nor the government has represented to me that I would receive probation or any other form of leniency because of my plea.
5. I have discussed this case and this plea with my lawyer as much as I wish, and I have no additional questions.
6. I am satisfied with my lawyer.
7. My decision to enter this plea was made after full and careful thought; with the advice of counsel; and with a full understanding of my rights, the facts and circumstances of the case, and the consequences of the plea. I was not under the influence of any drugs, medication, or intoxicants when the decision to enter my plea was made, and I am not now under the influence of any drugs, medication, or intoxicants.

8. I have no mental reservations concerning the plea.
9. I understand and agree to all of the above. I know that I am free to change or delete anything contained in this Statement in Advance. I do not wish to make changes to this agreement because I agree with the terms and all of the statements are correct.

DATED this 12 day of April, 2013.



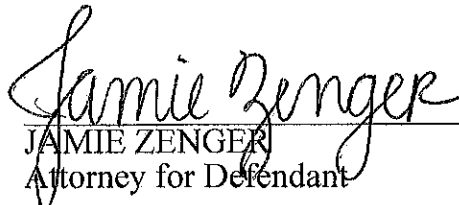
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WAYNE REED OGDEN  
Defendant

Attorney Certification

I certify that I have discussed this Statement in Advance with the defendant, that I have fully explained his rights to him, and I have assisted him in completing this form. I believe that he is knowingly and voluntarily entering the plea with full knowledge of his legal rights and that there is a factual basis for the plea.


DATED this 12<sup>th</sup> day of April, 2013.

  
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JAMIE ZENGER  
Attorney for Defendant

I represent that all terms of the plea agreement between the defendant and the government have been, or will be at the plea hearing, disclosed to the Court, and there are no off-the-record agreements between the defendant and the United States.

DATED this 12<sup>th</sup> day of April, 2013.

DAVID B. BARLOW  
United States Attorney

  
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MARK Y. HIRATA  
Assistant United States Attorney