

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:16-CR-226

v.

Hon. Paul L. Maloney
United States District Judge

JERRY LEE AKERS,

Defendant.

_____ /

PLEA AGREEMENT

This constitutes the plea agreement between Jerry Lee Akers and the United States Attorney's Office for the Western District of Michigan. The terms of the agreement are as follows:

1. Defendant Agrees to Plead Guilty. Defendant agrees to waive his right to indictment by the Grand Jury and plead guilty to the Felony Information, which charges Defendant with conspiracy to commit mail fraud and wire fraud, in violation of Title 18, United States Code, Section 1349.

2. Defendant Understands the Crime. In order for Defendant to be guilty of violating Title 18, United States Code, Section 1349 as charged in the Felony Information, the following must be true: (1) Two or more people conspired, or agreed, to commit the crime of mail fraud or wire fraud; and (2) Defendant knowingly and voluntarily joined the conspiracy.

Defendant is pleading guilty because he is guilty of the charge described above.

3. Defendant Understands the Penalties. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1349 is the following: 20 years in prison; a three-year period of supervised release; a fine of \$250,000 or twice the gross

gain or gross loss resulting from the offense, whichever is greater; and a mandatory special assessment of \$100.

Defendant agrees to pay the special assessment at or before the time of sentencing unless Defendant affirmatively demonstrates to the Court that he lacks the ability to pay.

4. Supervised Release Defined. Supervised release is a period of time following imprisonment during which Defendant will be subject to various restrictions and requirements. Defendant understands that if he violates one or more of the conditions of any supervised release imposed, he may be returned to prison for all or part of the term of supervised release, which could result in Defendant serving a total term of imprisonment greater than the statutory maximum stated above.

5. Factual Basis of Guilt. Defendant and the U.S. Attorney's Office agree and stipulate to the following facts, which need not be proven at the time of the plea or sentencing:

- a. Defendant has carefully reviewed the allegations contained in the Felony Information and agrees that each paragraph is true and accurate in all material respects.
- b. Defendant knowingly and voluntarily agreed with another person ("the co-conspirator") to devise and execute a scheme to defraud Herman Miller, Inc. ("HMI") and to obtain the company's money by means of false and fraudulent pretenses and representations. Defendant admits that he and his co-conspirator executed the scheme by having the co-conspirator submit materially false and fraudulent vendor invoices to HMI seeking payment for services never rendered to the company. Defendant admits that the false and fraudulent information

provided to HMI had a natural tendency to influence, and was capable of influencing, HMI to pay on the invoices. Defendant further admits that he acted with the intent to deceive or cheat to bring about financial gain to himself and his co-conspirator.

c. Defendant admits that he and his co-conspirator used electronic mail in furtherance of the scheme to defraud. Specifically, Defendant and his co-conspirator sent e-mail to each other, and his co-conspirator sent e-mail to HMI, in furtherance of the scheme to defraud. Defendant admits that he and the co-conspirator caused HMI to use the U.S. Mail in furtherance of the scheme to send payments to the co-conspirator as requested in the false and fraudulent invoices. Defendant agrees that the use of e-mail in furtherance of the scheme to defraud constitutes the use of a wire communication in interstate commerce, and that HMI's use of the mail was reasonably foreseeable in the ordinary course of business.

d. Defendant admits that, between in or about June 2010 to in or about July 2015, he and his co-conspirator obtained approximately \$1,772,726 from HMI through the scheme to defraud. HMI paid the money to Defendant's co-conspirator by mailing payment checks to the co-conspirator by U.S. Mail. During the course of the conspiracy, Defendant obtained cash payments from the co-conspirator.

6. Restitution. Defendant understands that, under the Mandatory Victim Restitution Act, he will be required to pay full restitution as required by law to the victims of the offense.

The parties agree that the applicable amount of restitution is approximately \$1,772,726, less the amount of money Defendant and/or the co-conspirator remits to HMI or its insurer, Great American Insurance Group, before the time of sentencing. Defendant understands and agrees that the restitution amount could increase or decrease based on facts that come to the attention of the parties prior to sentencing. Defendant understands that the Court, not the parties, will determine the amount of restitution to the victims.

7. Agreements on Forfeiture and Financial Accountability. Defendant agrees that the proceeds he and the co-conspirator obtained during the course of the conspiracy charged in the Felony Information total \$1,772,726 and that he is liable for a forfeiture money judgment in that amount pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). Defendant consents to the entry of a forfeiture money judgment at or before the time of sentencing in the amount of \$1,772,726, less the amount of money Defendant and/or his co-conspirator remits to HMI and/or its insurer, Great American Insurance Group, before the time of sentencing. To the extent Defendant deposits a restitution payment with the Clerk of the Court prior to sentencing, the U.S. Attorney's Office will move for a commensurate reduction in the Defendant's forfeiture money judgment, provided Defendant, through his attorney, notifies the U.S. Attorney's Office of the deposit and the U.S. Attorney's Office confirms the same.

Defendant admits that he no longer possesses the criminal proceeds from the conspiracy charged in the Felony Information and, therefore, consents to the forfeiture of substitute assets pursuant to 21 U.S.C. § 853(p) to apply against his forfeiture money judgment. Defendant admits that due to his own acts and omissions, the proceeds he obtained from the conspiracy charged in the Information cannot be located upon the exercise of due diligence; have been transferred, sold

to, or deposited with a third party; have been substantially diminished in value; and have been comingled with other property which cannot be divided without difficulty.

Additionally, Defendant agrees to:

- a. Truthfully answer all inquiries by the Government regarding Defendant's assets, testify truthfully as required, supply all available documentation, and assist in the location of any concealed assets.
- b. Complete a financial affidavit regarding his assets no later than 30 days prior to sentencing in a format supplied by the U.S. Attorney's Office.
- c. Not make any double jeopardy challenge to any administrative or civil forfeiture actions arising out of the course of conduct that provides the factual basis for the Felony Information. Defendant further agrees not to make any double jeopardy challenge to the charges in the Information or to the imposition of a sentence for the offenses covered by this plea agreement, based upon any administrative or civil forfeiture actions.

8. Cooperation in Criminal Investigations. Defendant agrees to fully cooperate with the Federal Bureau of Investigation, the U.S. Attorney's Office, and any other law enforcement agency in their investigation of the charges contained in the Felony Information as well as the investigation of crimes over which they have actual or apparent jurisdiction. Defendant's cooperation will consist of all steps needed to uncover and prosecute such crimes, including, but not limited to, providing investigators with a full, complete and truthful statement concerning Defendant's knowledge of any and all criminal activity of which he is aware; truthfully answering investigators' questions; meeting with prosecutors before testifying; truthfully testifying before

grand juries and in any court proceedings; and providing all relevant tangible evidence in Defendant's possession or under Defendant's control, including, but not limited to, objects, documents, and photographs. Defendant's obligation to cooperate under this paragraph is an affirmative one and includes the obligation to voluntarily come forward with any and all information which Defendant should reasonably know will assist in the investigation of other criminal activity. Defendant will not commit any criminal offense during the course of his cooperation with the United States. Defendant will submit to polygraph examination(s) upon request. Defendant's obligation under this paragraph is a continuing one, and shall continue after sentencing until all investigations and prosecutions in which Defendant's cooperation is deemed relevant by the U.S. Attorney's Office have been completed.

9. Possibility of Sentence Reduction Motion. The U.S. Attorney's Office will decide whether to file a motion for departure or reduction of sentence pursuant to Sentencing Guidelines § 5K1.1 and/or Rule 35(b) of the Federal Rules of Criminal Procedure. Defendant fully understands that such a motion may be made pursuant to law if, and only if, Defendant fully cooperates with the government and materially and substantially assists the government in the investigation or prosecution of others. The determinations of whether Defendant has provided substantial assistance to the United States, or to designated state or local law enforcement authorities, will be made in the sole discretion of the U.S. Attorney's Office. Defendant fully understands that this paragraph is not a promise by the government to file a motion for departure or to reduce a sentence. Additionally, Defendant understands that, even if such a motion were filed, the Court has complete discretion to grant or deny the motion. Furthermore, if the Court were to grant the motion, the Court—not the government—would decide how much of a sentence

reduction Defendant receives based upon the nature and extent of Defendant's assistance. Defendant acknowledges and agrees that Defendant may not appeal the Court's exercise of its discretion in granting or denying a motion for departure or reduction of sentence, if such a motion is made.

10. Acceptance of Responsibility. The U.S. Attorney's Office agrees not to oppose Defendant's request for a two-level reduction of his offense level for acceptance of responsibility under Section 3E1.1(a) of the Sentencing Guidelines. However, the U.S. Attorney's Office reserves the right to object to Defendant's request if it subsequently learns of conduct by Defendant that is inconsistent with the criteria set forth in the Commentary to Section 3E1.1. Should the Court grant a two-level reduction as provided herein, the government states that Defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying it of his intention to enter a guilty plea, thereby permitting the government to avoid preparing for trial, and hereby moves the Court to grant an additional one-level reduction if the adjusted offense level is 16 or greater.

11. No Additional Charges. The U.S. Attorney's Office for the Western District of Michigan agrees not to further prosecute Defendant for violations of federal law arising out of his scheme to defraud as described in the Felony Information, provided that the conduct is disclosed to the government by Defendant or his attorney prior to the date of this agreement. The Defendant shall remain subject to prosecution for any criminal activity he has failed to disclose to the government prior to the date of the agreement. This promise of non-prosecution shall not include crimes of violence, if any, or criminal tax violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371).

12. USSG § 1B1.8 Protection for Proffered Statements. The U.S. Attorney's Office agrees that information provided by Defendant through Defendant's proffer(s), and any information provided pursuant to Defendant's promise to cooperate as described in this agreement, will not be used by the government to enhance Defendant's sentence, in accordance with Sentencing Guidelines § 1B1.8, and according to the terms of the written agreement entered into between the parties immediately prior to the proffer. It is expressly understood, however, that such information may be used by the government at sentencing if Defendant takes a position at sentencing that contradicts information provided by Defendant pursuant to this agreement or any proffer agreement.

13. The Sentencing Guidelines. Defendant understands that, although the United States Sentencing Guidelines (the "Guidelines") are not mandatory, the Court must consult the Guidelines and take them into account when sentencing Defendant. Defendant understands that the Court, with the aid of the presentence report, will determine the facts and calculations relevant to sentencing. Defendant understands that Defendant and Defendant's attorney will have the opportunity to review the presentence report and to make objections, suggestions, and recommendations concerning the calculation of the Guideline range and the sentence to be imposed. Defendant further understands that the Court shall make the final determination of the Guideline range that applies in this case, and may impose a sentence within, above, or below the Guideline range, subject to the statutory maximum penalties described elsewhere in this Agreement. Defendant further understands that disagreement with the Guideline range or sentence shall not constitute a basis for withdrawal of the plea.

14. No Agreement on Sentencing Guideline Factors or Range. Defendant and the U.S. Attorney's Office have no agreement as to the applicable Sentencing Guidelines factors or the appropriate guideline range. Both parties reserve the right to seek any sentence within the statutory maximum, and to argue for any criminal history category and score, offense level, specific offense characteristics, adjustments, and departures.

15. Waiver of Constitutional Rights. By pleading guilty, Defendant gives up the right to persist in a plea of not guilty and the right to a speedy and public trial by jury or by the Court. As a result of Defendant's guilty plea, there will be no trial. At any trial, whether by jury or by the Court, Defendant would have had the following rights:

- a. The right to the assistance of counsel, including, if Defendant could not afford an attorney, the right to have the Court appoint an attorney to represent Defendant.
- b. The right to be presumed innocent and to have the burden of proof placed on the government to prove Defendant guilty beyond a reasonable doubt.
- c. The right to confront and cross-examine witnesses against Defendant.
- d. The right, if Defendant wished, to testify on Defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.
- e. The right not to be compelled to testify, and, if Defendant chose not to testify or present evidence, to have that choice not be used against Defendant.
- f. By pleading guilty, Defendant also gives up any and all rights to pursue in this Court or on appeal any affirmative defenses, Fourth Amendment or Fifth

Amendment claims, and other pretrial motions that have been filed or could be filed.

16. Waiver of Right to Appeal or Collaterally Attack the Conviction or Sentence.

a. Waiver. In exchange for the promises made by the government in entering this plea agreement, Defendant waives all rights to appeal or collaterally attack Defendant's conviction, sentence, or any other matter relating to this prosecution, except as listed below.

b. Exceptions. Defendant may appeal or seek collateral relief to raise a claim, if otherwise permitted by law in such a proceeding, on the following grounds:

- (1) Defendant's sentence on any count of conviction exceeded the statutory maximum for that count;
- (2) Defendant's sentence was based on an unconstitutional factor, such as race, religion, national origin, or gender;
- (3) The district court incorrectly determined the Sentencing Guidelines range, if Defendant objected at sentencing on that basis;
- (4) Defendant's sentence was above the Sentencing Guidelines range as determined by the Court at sentencing and is unreasonable;
- (5) Defendant's guilty plea was involuntary or unknowing;
- (6) An attorney who represented Defendant during the course of this criminal case provided ineffective assistance of counsel.

If Defendant appeals or seeks collateral relief, Defendant may not present any issue in the proceeding other than those described above.

17. FOIA Requests. Defendant hereby 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, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

18. Hyde Waiver. Defendant acknowledges, by his voluntary admissions of guilt, that the position of the U.S. Attorney's Office in this case is not vexatious, frivolous, or in bad faith, and he hereby disclaims and waives any right to make any claim for attorney fees.

19. The Court is Not a Party to this Agreement. Defendant understands that the Court is not a party to this agreement and is under no obligation to accept any recommendation by the U.S. Attorney's Office or the parties regarding the sentence to be imposed. Defendant further understands that, even if the Court ignores such a recommendation or imposes any sentence up to the maximum established by statute, Defendant cannot, for that reason, withdraw his guilty plea, and he will remain bound to fulfill all his obligations under this agreement. Defendant understands that no one—not the prosecutor, Defendant's attorney, or the Court—can make a binding prediction or promise regarding the sentence Defendant will receive, except that it will be within the statutory maximum.

20. This Agreement is Limited to the Parties. This agreement is limited to the U.S. Attorney's Office for the Western District of Michigan, and cannot bind any other federal, state or local prosecuting, administrative or regulatory authority. This agreement applies only to crimes committed by Defendant. This agreement does not apply to or preclude any past, present, or future forfeiture or civil actions.


21. Consequences of Breach. If Defendant breaches any provision of this agreement, including any promise of cooperation, whether before or after sentencing, the United States shall have the right to terminate this agreement, or deny any or all benefits to which Defendant would otherwise be entitled under the terms of this agreement. In the event that the United States elects to terminate this agreement, the agreement shall be considered null and void, and the parties shall return to the same position they were in prior to the execution of this agreement, as though no agreement ever existed. In such an event, Defendant shall remain liable for prosecution on all original charges, and the United States shall be free to bring such additional charges as the law and facts warrant. Defendant further agrees to waive and forever give up his right to raise any claim that such a prosecution is time-barred if the prosecution is brought within one (1) year of the breach that gives rise to the termination of this agreement.

22. This is the Complete Agreement. This agreement has been entered into by both sides freely, knowingly, and voluntarily, and it incorporates the complete understanding between the parties. No other promises have been made, nor may any additional agreements, understandings or conditions be entered into unless in a writing signed by all parties or on the record in open court.

23. Deadline for Acceptance. If a copy of this agreement, executed by Defendant and defense counsel, is not returned to the U.S. Attorney's Office by December 2, 2016, this agreement will be withdrawn automatically and will thereafter have no legal effect or force, unless the U.S. Attorney's Office, in its sole discretion, chooses to accept an executed agreement after that date.

PATRICK A. MILES, JR.
United States Attorney

12/1/2016
Date


CHRISTOPHER M. O'CONNOR
Assistant United States Attorney

I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

11-29-2016
Date


JERRY LEE AKERS
Defendant

I am Jerry Lee Akers's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

November 29, 2016
Date


CHARLES E. CHAMBERLAIN, JR.
Attorney for Defendant