

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) No. S1-4:09CR626
 v.) **FILED UNDER SEAL**
)
 KENNEDY RUSSELL,)
)
 Defendant.)

**PLEA AGREEMENT, GUIDELINES
RECOMMENDATIONS AND STIPULATIONS**

Come now the parties pursuant to Section 6B1.4, Sentencing Guidelines and Policy Statements (October 1987), and the Administrative Order of this Court (July 19, 2006) and hereby stipulate and agree that the following are the parties' agreements, recommendations and stipulations:

1. **THE PARTIES:**

The parties to the agreements, recommendations and stipulations contained herein are the defendant Kennedy Russell, defense counsel John Stobbs, Esq., and the Office of the United States Attorney for the Eastern District of Missouri (hereinafter "the government"). This document and the agreements, recommendations and stipulations contained herein do not, and are not intended to, bind any governmental office or agency other than the United States Attorney for the Eastern District of Missouri. It is understood by the parties that the Court is neither a party to nor bound by these agreements, recommendations and stipulations.

2. **PLEA AGREEMENTS:**

A. **The Plea:**

Pursuant to Rule 11(c)(1)(A), Federal Rules of Criminal Procedure, in exchange for the defendant's voluntary plea of guilty to Count I of the superseding information, the government agrees that no further federal prosecution will be brought in this District relative to the defendant's acceptance of any benefit as consideration for failing to report criminal activity described in this document. In the event the Court accepts this agreement, the government will move to dismiss Counts I, II and III of the Indictment without prejudice at the time of sentencing. The defendant recognizes that the government will retain the right to re-initiate the charges set forth at Counts I, II and III of the indictment if it believes the defendant is not truthful and cooperative in the ongoing investigation into the creation and misuse of "Bonded Promissory Notes" discussed below.

Pursuant to Rule 11(c) and (d), Federal Rules of Criminal Procedure, the defendant fully understands that there will be no right to withdraw the plea entered under this agreement, except where the Court rejects those portions of the plea agreement which deal with charges the government agrees to dismiss or not to bring.

B. The Sentence:

Pursuant to Rule 11(c)(1)(B), Federal Rules of Criminal Procedure, in this document the parties have addressed the United States Sentencing Guidelines, the factors set forth in Title 18, United States Code, Section 3553(a), and other factors relevant to sentencing. The parties agree that the recommendations contained herein fairly and accurately set forth the Guidelines applicable to this case. The parties believe that the Court should use these recommendations in determining the defendant's sentence, along with any other factors specified in this agreement.

The parties understand that the District Court is neither a party to nor bound by the

Guidelines recommendations agreed to in this document.

C. Waiver of Post-Conviction Rights:

(1) **Appeal:** The defendant has been fully apprised by defense counsel of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742. In the event the Court accepts the plea, as part of this agreement, both the defendant and the government hereby waive all rights to appeal all non-jurisdictional issues including, but not limited to, any issues relating to pretrial motions, hearings and discovery and any issues relating to the negotiation, taking or acceptance of the guilty plea or the factual basis for the plea, or any issues relating to the sentencing process or attacking the sentence imposed.

(2) **Habeas Corpus:** The defendant acknowledges being guilty of the crime(s) to which a plea is being entered, and further states that neither defense counsel nor the government has made representations which are not included in this document as to the sentence to be imposed. The defendant further agrees to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.

(3) **Right to Records:** The defendant waives all rights, whether asserted directly or by a representative, to request 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, Title 5, United States Code, Section 522, or the Privacy Act, Title 5, United States Code, Section 552(a).

D. Disclosures Required by the United States Probation Office:

The defendant agrees to complete and sign forms as required by the United States Probation Office prior to sentencing.

E. Civil or Administrative Actions not Barred; Effect on Other Governmental Agencies:

The defendant has discussed with defense counsel and understands that nothing contained in this document is meant to limit the rights and authority of the United States of America to take any civil, tax or administrative action against the defendant including, but not limited to, asset forfeiture, deportation and any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with government agencies. Further, any recommendation in this document as to the amount of loss or restitution is not binding upon the parties in any civil or administrative action by the government against the defendant.

F. Forfeiture of Interest in Property Seized:

The defendant agrees to forfeit all of the defendant's interest in all items seized by law-enforcement officials during the course of their investigation and will not contest the forfeiture to law enforcement of such items.

G. Cooperation:

The defendant, in consideration of the government's decision to amend the original charge, has agreed to cooperate in the government's ongoing investigation into the creation and misuse of "Bonded Promissory Notes." As discussed above, in the event the defendant is not truthful and cooperative in the sole discretion and judgment of the government, the government may re-initiate the felony charges set forth in Counts I, II, and III of the indictment and any other charges it believes may fairly be brought against the defendant.

Because this document discusses the defendant's cooperation with an ongoing criminal investigation, the government asks this document be ordered sealed until six months after the date of sentencing.

3. **GUIDELINES RECOMMENDATIONS (NOT BINDING ON THE COURT):**

A. **Manual to be Used:** The parties recommend that the 2009 version of the Guidelines Manual applies.

B. **Offense Conduct:**

(1) **Base Offense Level:** The parties recommend that the base offense level is 9 under Section 2B3.3(a).

(2) **Chapter 2 Specific Offense Characteristics:** The parties recommend that the following Specific Offense Characteristics apply: none.

C. **Chapter 3 Adjustments:** The parties recommend that the following adjustments, other than acceptance of responsibility, apply: none.

D. **Acceptance of Responsibility:** The parties recommend that two levels should be deducted pursuant to Section 3E1.1(a) because the defendant has clearly demonstrated acceptance of responsibility.

E. **Other Adjustment(s):**

The parties recommend that the defendant be admitted to three years probation, fined \$1,000, ordered to withdraw the Bonded Promissory Note filed in United States of America v. Donald McDowell, 4:07MC583 and repudiate its validity in writing to the Honorable Jean C. Hamilton, the United States District Judge overseeing that lawsuit within 30 days of the acceptance of this plea agreement. The defendant also agrees to perform 40 hours of community

service per year for every year he is on probation in this matter. The foregoing are recommendations of the parties and do not bind the Court.

F. Estimated Total Offense Level: Based on these recommendations, the parties estimate that the Total Offense Level is 7.

G. Criminal History: The determination of the defendant's Criminal History Category shall be left to the Court after it reviews the Presentence Report. The Criminal History Category determination will be made only after the United States Probation Office obtains and evaluates the records it can find of the defendant's criminal history. Prior convictions can affect the sentence and usually result in a harsher sentence. Both parties retain their right to challenge, before sentencing, the finding of the Presentence Report as to the defendant's criminal history and the applicable category.

4. STIPULATION OF FACTS RELEVANT TO SENTENCING:

The parties stipulate and agree that the facts in this case are as follows and that the government would prove these facts beyond a reasonable doubt:

On or about October 27, 2008, the defendant received something of value, to wit: an interest free loan, in exchange for not informing against Alice Jean Logan and others involved in the creation and dissemination of "Bonded Promissory Notes" said documents being false demands against the United States in violation of Title 18, United States Code Section 1002.

The defendant and the government agree that the facts set forth above are true and may be considered as "relevant conduct" pursuant to Section 1B1.3.

5. ELEMENTS OF THE OFFENSE:

As to Count I of the superseding information, the defendant admits to knowingly

violating Title 18, United States Code, Section 873, and admits there is a factual basis for the plea and further fully understands that the elements of the crime are: the defendant (1) in consideration for not informing (2) against any violation of a law of the United States (3) received something of value. This offense is a class A misdemeanor.

6. **PENALTIES:**

A. **Statutory Penalties:** The defendant fully understands that the maximum possible penalty provided by law for the crime to which the defendant is pleading guilty is imprisonment of not more than one year, a fine of not more than \$100,000, or both such imprisonment and fine. The Court may also impose a period of supervised release of not more than one year supervised released.

B. **Sentencing Guidelines Effect on Penalties:** The defendant understands that except for Title 18, Sections 3553(b)(1) and Section 3742 (e), this offense is affected by the provisions and Guidelines of the Sentencing Reform Act of 1984, Title 18, United States Code, Sections 3661 *et. seq.* and Title 28, United States Code, Section 994.

C. **Supervised Release:** The defendant understands that the Court may impose a term of "supervised release" to follow incarceration pursuant to Title 18, United States Code, Section 3583 (Sentencing Guidelines, Chap. 5, Part D). The defendant further understands that pursuant to the supervised release term, the Court will impose standard conditions upon the defendant and may impose special conditions upon the defendant which relate to the crime the defendant committed. These conditions will be restrictions on the defendant to which the defendant will be required to adhere. The defendant further understands that violation of the conditions of the term of supervised release resulting in revocation may require the defendant to

serve a term of imprisonment equal to the length of the term of supervised release, but not greater than the term set forth in Title 18, United States Code, Section 3583(e)(3), without credit for the time served after release. The defendant understands that parole has been abolished.

D. **Mandatory Special Assessment:** The defendant further acknowledges that this offense is subject to the provisions of the Criminal Fines Improvement Act of 1987 and that the Court is required to impose a mandatory special assessment of \$50, which the defendant agrees to pay at the time of sentencing.

7. **FINES, RESTITUTION AND COSTS:**

The defendant understands that the Court may impose a fine, restitution (in addition to any penalty authorized by law), costs of incarceration and costs of supervision. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately.

8. **ACKNOWLEDGMENT AND WAIVER OF THE DEFENDANT'S RIGHTS:**

The defendant acknowledges and fully understands the following rights: The right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the entire case against the defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and cross-examine adverse witnesses; the right to testify and present evidence and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph.

The defendant fully understands that the defendant has the right to be represented by

counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The defendant's counsel has explained these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.

The defendant is fully satisfied with the representation received from defense counsel. The defendant has reviewed the government's evidence and discussed the government's case and all possible defenses and defense witnesses with defense counsel. Defense counsel has completely and satisfactorily explored all areas which the defendant has requested relative to the government's case and any defenses.

9. PRESENTENCE REPORT AND SENTENCING:

Following defendant's guilty plea, a Presentence Report will be prepared. At the time of sentencing, the parties reserve the right to allocution regarding the appropriate sentence to be imposed. Each party also reserves the right to bring any misstatements of fact made either by the other party or on that party's behalf to the attention of the Court at the time of sentencing.

10. STANDARD OF INTERPRETATION:

In interpreting this document, any drafting errors or ambiguities shall not automatically be construed against any party, whether or not the party was involved in drafting this document.

11. VOLUNTARY NATURE OF THE PLEA AND THE PLEA AGREEMENT, RECOMMENDATIONS AND STIPULATIONS:

This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any

agent of the government, including any Department of Justice attorney, concerning any plea to be entered in this case or the agreements, recommendations or stipulations contained herein.

The defendant acknowledges that the defendant has voluntarily entered into both this plea and these agreements, recommendations and stipulations. The defendant further acknowledges that this guilty plea is made of the defendant's own free will because the defendant is, in fact, guilty of the conduct specified in sections four and five above.

12. CONSEQUENCES OF FURTHER CRIMINAL CONDUCT OR WITHDRAWAL OF PLEA BY DEFENDANT:

The defendant agrees that if, between the time of signing this document and the sentencing, the defendant engages in any criminal activity, the government shall be released from any obligations or limits on its power to prosecute the defendant created by this document, and any such conduct shall be grounds for the loss of acceptance of responsibility pursuant to Section

3E1.1.

12-2-09


Date

12-3-09

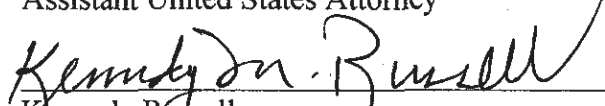
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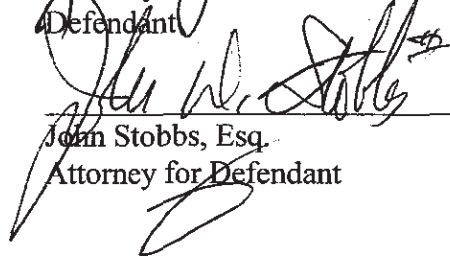
Date



Thomas C. Albus, #96250
Assistant United States Attorney



Kennedy Russell
Defendant



John Stobbs, Esq.
Attorney for Defendant