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U. S. COURTS

SEP 26 2004
REC'D
CLERK IDAHO

7 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 ELLIS R. JACKMAN,

13 Defendant.

Cr. No.

RULE 11 PLEA AGREEMENT

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1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1)(B) of the Federal Rules of
3 Criminal Procedure, the defendant, the attorney for the defendant, and the Government¹ agree
4 that the defendant will waive indictment and plead guilty to Count One of the Information.
5 More specifically, the parties agree as follows:

6 Count One charges the defendant with Making False Entries in the Books of a Credit
7 Union, in violation of Title 18 U.S.C. § 1006.

8 Upon acceptance of the defendant's guilty plea, and the defendant's full compliance with
9 the other terms of this Agreement, the Government agrees to the terms of the Agreement.

10 **B. Elements of the Crime.** The elements of the crime of Making False Entries in
11 the Books of a Credit Union, as charged in Count One, are as follows:

- 12 1. The defendant was employed by the Blackfoot Educators Credit Union as
13 the President and CEO;
- 14 2. The defendant, while so employed, asked an employee to remove a
15 \$70,000 loan in the defendant's name from the credit union loan books;
- 16 3. Also, while so employed, the defendant presented checks totaling
17 \$115,633.34 to another credit union employee in payment for other loans
18 so these loans would appear at that time to have been paid;
- 19 4. In fact, the defendant still owed the \$70,000 loan and the defendant's
20 checking account had only \$2,233.99 in the account to cover the
21 \$115,633.39 check;
- 22 5. The defendant did so with the intent to deceive credit union examiners
23 from the Idaho Department of Finance

24 **C. Factual Basis.** If this matter were to proceed to trial, the Government and the
25 defendant agree that the following facts would be proven beyond a reasonable doubt, which

26 ¹The word "Government" in this Agreement refers to the United States Attorney for the
27 District of Idaho.

1 facts accurately represent the defendant's readily provable offense conduct. This factual
2 summary is not intended to detail all relevant conduct, or cover all specific offense
3 characteristics, which will be determined by the Court after its consideration of the Presentence
4 Report.

5 Ellis Royce Jackman was employed as the President and Chief Executive Officer of the
6 Blackfoot Educators Credit Union. On March 24, 1998, examiners from the Idaho Department
7 of Finance arrived to conduct an audit of the credit union's accounts and books. Jackman asked
8 an employee to alter a page of the credit union's loan book to conceal a \$70,000 loan to
9 Jackman. The employee did so. Jackman gave another employee checks drawn on his checking
10 account totaling \$115,633.39 so other loans would appear to the examiners to have been paid,
11 although Jackman's checking account contained only \$2,233.99. The defendant asked the
12 employee to send the checks through the check routing system, rather than immediately
13 processing them at the credit union, so the loans would appear to the examiners to have been
14 paid while the examiners were at the credit union. The defendant took these actions to deceive
15 the credit union examiners.

16 II. SENTENCING FACTORS

17 A. **Maximum and Minimum Penalties.** A violation of Making False Entries in
18 the Books of a Credit Union, as charged in Count One, is punishable by a maximum term of
19 imprisonment of thirty (30) years, a maximum fine of \$1,000,000, a term of supervised release
20 of up to five (5) years, and a \$100 special assessment.

21 B. **Application of Sentencing Guidelines.** Defendant understands that he/she will
22 be sentenced under the Federal Sentencing Guidelines and that: (1) the sentence has not yet
23 been determined by the District Judge; (2) any estimate of the likely sentence received from any
24 source is a prediction and not a promise, and (3) the District Judge has the final authority to
25 decide what the sentence will be.

26 The defendant also understands that the Court will determine the applicable sentencing
27 factors at sentencing and that the Court's determination will affect the sentence range under the

1 Sentencing Guidelines. While the Court may take the defendant's cooperation and the
2 recommendations of the parties into account in determining the sentence to be imposed, the
3 Court has complete discretion to impose a sentence other than the sentence recommended,
4 including the maximum sentence possible for the crimes to which defendant has pled.

5 **C. No Right to Withdraw Plea.** The defendant understands that the Court is not
6 bound to follow any recommendations or requests made by the parties. If the Court refuses to
7 follow such recommendations or requests, the defendant will not be given the opportunity to
8 withdraw his plea(s).

9 **D. Recommendations and Requests**

10 **1. Acceptance of Responsibility.** Unless the Government learns of new
11 information to the contrary, defendant will be entitled to a reduction of two levels in the
12 combined adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the
13 defendant accepts responsibility for the offense by truthfully admitting the defendant's
14 participation in the offense. The Government will recommend an additional one-level reduction
15 in the combined offense level, under section 3E1.1(G), if the following conditions are met: the
16 defendant qualifies for a decrease under section 3E1.1(a); the offense is level 16 or greater; and
17 the defendant has assisted authorities in the investigation or prosecution of his own misconduct
18 by taking one or more of the following steps: (1) timely providing complete information to the
19 government concerning his own involvement in the offense; or (2) timely notifying authorities
20 of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing
21 for trial and permitting the court to allocate its resources efficiently.

22 If, at any time prior to imposition of sentence, the Defendant fails to meet the criteria set
23 out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner inconsistent with
24 acceptance of responsibility, the Government will not make such a recommendation or, if one
25 has already been made, it will withdraw the recommendation. The criteria and acts which are
26 inconsistent with acceptance of responsibility include: (1) failure to admit a complete factual
27 basis for the plea at the time it is entered, or (2) denial of involvement in the offense, giving

1 conflicting statements about that involvement, or being untruthful with the Court or Probation
2 Officer, or (3) failure to appear in Court, or (4) engaging in any additional criminal conduct
3 prior to sentencing, or (5) attempting to withdraw the plea(s).

4 The government agrees to recommend a downward departure for extraordinary
5 acceptance of responsibility for the defendant's civil settlement with the credit union. The
6 downward departure will be sufficient to place the defendant in Zone B and the government will
7 recommend home detention.

8 **E. Fines, Costs, and Restitution.** Unless the Court determines that the defendant
9 will not reasonably be able to pay a fine, or that paying a fine will unduly burden any of the
10 defendant's dependents, a fine shall be imposed. There is no agreement as to the amount of the
11 fine. The Court may also order the defendant to pay the costs of imprisonment, probation, and
12 supervised release. In addition to imposing a fine, the Court, pursuant to 18 U.S.C. §§
13 3563(b)(3), 3583, and 3663-64, and Section 5E1.1 of the Sentencing Guidelines, may order
14 defendant to pay restitution in an amount equal to the loss caused to any victim(s) of the
15 offense(s) charged in the Indictment.

16 **F. Special Assessment.** Defendant will pay a special assessment of \$100 per count,
17 in addition to any fine imposed. This assessment will be paid by defendant before sentence is
18 imposed, and defendant will furnish a receipt at sentencing. Payment is to be made to the
19 United States District Court, Clerk's Office, Federal Building and United States Courthouse,
20 550 W. Fort Street, Fourth Floor, Boise, ID 83724.

21 **G. Supervised Release.** The defendant will be sentenced to a term of supervised
22 release to be served after incarceration. The defendant's term of supervised release will be a
23 specific (i.e., a determinate) term chosen by the Court at sentencing. The combination of prison
24 time and supervised release is permitted, by law, to exceed the maximum term of incarceration
25 allowed under the statute(s) that defendant is pleading guilty to violating. Violation of any
26 condition of supervised release may result in defendant being imprisoned for the entire term of
27 supervised release or being prosecuted for contempt of court under 18 U.S.C. § 401(3).

1 **H. Providing Information for the Presentence Report.** The defendant agrees to
2 provide all material financial and other information as may be requested by a representative of
3 the United States Probation Department for their use in preparing a Presentence Report. Failure
4 to execute releases and/or provide such material information as may be required is a violation of
5 the terms of this Agreement, and will relieve the Government of its obligations as set forth in
6 this Agreement, and may subject the defendant to an enhancement under Guidelines Section
7 3C1.1, or provide grounds for an upward departure under Section 5K2.0 of the Sentencing
8 Guidelines, but will not constitute grounds for withdrawing the plea of guilty.

9 **III. WAIVER OF APPEAL RIGHTS**

10 The defendant is pleading guilty voluntarily and intends to give up (waive) all appeal
11 and post-conviction rights he may have regarding his conviction and his sentence in exchange
12 for the other terms of this agreement. Therefore, defendant promises not to appeal or otherwise
13 contest his conviction or sentence on any ground, except those contained in 18 U.S.C. §3742,
14 and the defendant promises not to file any post-conviction proceeding, except for a proceeding
15 authorized by Title 18 U.S.C. § 2255, alleging ineffective assistance of counsel.

16 If the defendant knowingly violates any of the terms of this agreement, any guilty plea(s)
17 by the defendant, and any judgment and/or sentence based thereon, shall remain in full force and
18 effect and will not be the subject of any legal challenge by the defendant on appeal or collateral
19 attack.

20 The defendant further understands that nothing in this Plea Agreement shall affect the
21 Government's right and/or duty to appeal as set forth in 18 U.S.C. §3742(b).

22 The government may defend any action of the district court on appeal.

23 **IV. CONSEQUENCES OF VIOLATING AGREEMENT**

24 **A. Government's Options.** If the defendant fails to comply with any obligation or
25 promise pursuant to this Agreement, the Government may withdraw from the Agreement in its
26 entirety. In such an event, the defendant understands that he will not be permitted to withdraw
27 his guilty plea(s).

1 The defendant's violation of this Agreement will also relieve the Government of any
2 obligation not to prosecute the defendant on other charges, including any charges dismissed as
3 part of this Agreement, or any other offenses known to the Government for which he is
4 responsible, including perjury and obstruction of justice.

5 The defendant further understands and agrees that if defendant does not enter a valid and
6 acceptable plea, the Government will move to further continue the trial now set. The defendant
7 agrees not to contest such a continuance, and agrees that the resulting delay would be
8 excludable time under 18 U.S.C. §§3161(h)(1)(I), (h)(3)(A), or (h)(8)(A). This continuance will
9 be necessary to allow the Government adequate time to prepare for trial.

10 If the defendant breaches this Agreement after sentence is imposed, the Government will
11 have the right to move to vacate the defendant's conviction(s) so that such charge(s) may be re-
12 prosecuted.

13 If there is a dispute regarding the obligations of the parties under this Agreement, the
14 United States District Court shall determine whether the Government or the defendant has failed
15 to comply with this Agreement, including whether the defendant has been truthful.

16 **B. Defendant's Waiver of Rights.** Defendant agrees that if defendant fails to keep
17 any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in
18 jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed
19 under this Agreement; (2) any right under the Constitution and laws of the United States to be
20 charged or tried in a more speedy manner for any charge that is brought as a result of
21 defendant's failure to keep this Agreement; and (3) the right to be charged within the applicable
22 statute of limitations period for any charge that is brought as a result of defendant's failure to
23 keep this Agreement, and on which the statute of limitations expired after defendant entered
24 into this Agreement.

25 Furthermore, the defendant understands that by entering a plea of guilty, if that plea is
26 accepted by the Court, there will be no trial and he will have waived (given up) his right to a
27 trial as well as the following rights associated with a trial: that he has a right to plead not guilty

1 to the offense(s) charged against him and to persist in that plea; that he has the right to a trial by
2 jury; that at trial he would be presumed innocent and the government would have to prove guilt
3 beyond a reasonable doubt; and that he would have the right to assistance of counsel for his
4 defense; the right to see and hear all the witnesses and have them cross-examined in his defense,
5 the right to decline to testify unless he voluntarily elected to do so in his own defense, and the
6 right to the issuance of subpoenas or compulsory process to compel the attendance of witnesses
7 to testify in his defense, or if he decided not to testify or put on any evidence, that these facts
8 would not be held against him.

9 The defendant understands that by pleading guilty he waives (gives up) all of the rights
10 set forth above. The defendant understands that if he enters a plea of guilty, no trial will, in fact,
11 occur and that the only thing remaining to be done in this case is the sentencing hearing, at
12 which only matters concerning the nature of the sentence to be imposed by the Court are to be
13 heard and decided by the Court.

14 **C. Perjury, False Statements, or Other Crimes.** The Government agrees to bring
15 no further charges against the defendant arising from information learned during the
16 investigation which brought about this plea, except for crimes of violence as defined in 18
17 U.S.C. §924(e)(3), if any. Nothing in this Agreement shall be construed to protect the
18 defendant in any way from prosecution for perjury, obstruction of justice, false declaration, or
19 false statements, as defined by the law of any sovereign, or any other offense committed by the
20 defendant after the date of this Agreement. Any information, statements, documents, and
21 evidence which the defendant provides the Government pursuant to this Agreement may be
22 used against him in any such prosecutions.

23 **V. MISCELLANEOUS**

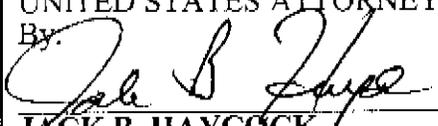
24 **A. No Other Terms.** This Agreement incorporates the complete understanding
25 between the parties, and no other promises have been made by the Government to the defendant
26 or to the attorney for the defendant. This Agreement does not prevent any governmental agency
27 from pursuing civil or administrative actions against defendant or any property. Unless an

1 exception to this paragraph is explicitly set forth elsewhere in this document, this Agreement
2 does not bind or obligate governmental entities other than the United States Attorney's Office
3 for the District of Idaho. If requested to do so by the defendant or his counsel, the Government
4 will bring the defendant's cooperation and pleas to the attention of other prosecuting authorities.

5 **VI. UNITED STATES' APPROVAL**

6 I have reviewed this matter and the Plea Agreement. I agree on behalf of the United
7 States that the terms and conditions set forth above are appropriate and are in the best interests
8 of justice.

9 THOMAS E. MOSS
10 UNITED STATES ATTORNEY

11 By: 

12 **JACK B. HAYCOCK**
Assistant United States Attorney

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