

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEON-VILLE ANTONIO O'HARA,

Defendant.

Case No. 4:12-cr-175

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States of America, by its attorneys, Timothy Q. Purdon, United States Attorney for the District of North Dakota, and Clare R. Hochhalter, Assistant United States Attorney, defendant DEON-VILLE ANTONIO O'HARA, and defendant's attorney, STEVEN D. MOTTINGER, hereby agree to the following:

1. Defendant acknowledges the Third Superseding Indictment charges defendant with violations of Title 18, United States Code, Sections 1341, 1343, 1349, 2326, 981(a)(1)(C), 982(a)(8), 982(b)(1), 1956(h), and 2; Title 21, United States Code, Section 853; and Title 28, United States Code, Section 2461(c).
2. Defendant has read the charges and defendant's attorney has fully explained the charges to defendant.
3. Defendant fully understands the nature and elements of the charged crimes.
4. Defendant will voluntarily plead guilty to Count One of the Third Superseding Indictment, conspiracy to commit wire fraud and mail fraud in connection with the conduct of telemarketing fraud, and admit the Forfeiture Allegation.

5. The parties agree this Plea Agreement shall be filed and become a part of the Court record and be governed by Federal Rule of Criminal Procedure 11(c). The parties specifically agree that Rule 11(c)(1)(C) does not apply. If the United States makes the non-binding recommendations specified in this Plea Agreement, then defendant acknowledges this agreement will have been fulfilled. Except as provided in Rule 11(c)(5), the Court's refusal to accept any or all terms of the Plea Agreement does not give defendant a right to withdraw defendant's guilty plea.

6. Defendant will plead guilty because defendant is in fact guilty of the charge in Count One. In pleading guilty to Count One, defendant acknowledges that:

From an unknown time beginning in or about January 2009 and continuing through the present time, in the Districts of North Dakota, South Dakota, New York, New Hampshire, South Carolina, California, Texas, and Florida; Jamaica, and elsewhere, Lavrick Willocks; Mario Hines; Gregory Gooden; Gareth Billings; Akil Gray; Dario Palmer, aka Innocent Palmer; Mikael Omarr Gillette; Shannon O'Connor; Christina Renee Hogarth; Kimberly Carol-Jean Hudson; Xanu Ann Morgan; Sherlet Anetta Love; Jason Joseph Jahalal; Kazrae Gray; Dahlia Elaine Hunter; Sanjay Williams; Samantha Brown; James Hayes Simpson; Tristan Fisher; Ricardo Augustus Bryan; O'Neil Brown; Alrick McLeod, aka Birdman, aka Z-Bird; Natalie Dougherty; Lindsay Mattig; Charles Calvin Bauder; and DEONVILLE ANTONIO O'HARA, and others in connection with the conduct of telemarketing, did knowingly and willfully combine, conspire, confederate, and agree with each other and others, known and unknown to the grand jury, for the purpose of executing the aforesaid scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations and promises were false and fraudulent when made, (a) to commit wire fraud, that is, to transmit and cause to be transmitted certain wire communications in interstate and foreign commerce for the purpose of executing a scheme and artifice that affects a financial institution, in violation of Title 18, United States Code, Section 1343; and (b) to commit mail fraud, that is, to place and cause to be placed in a post office and authorized depository for mail matter, money to be sent and delivered by the U.S. Postal Service; and did deposit and cause to be deposited, money to be delivered by private and commercial interstate carriers; and took and

received money therefrom, and knowingly caused it to be delivered by mail and by such carrier according to the direction thereon, at places which it was directed to be delivered by the person to whom it was addressed, affecting a financial institution, in violation of Title 18, United States Code, Section 1341.

OBJECT OF THE CONSPIRACY

The object of the conspiracy was for defendants and co-conspirators to fraudulently enrich themselves by falsely informing more than ten (10) victims over the age of 55 that the victims had won large cash awards of money, inducing the victims to pay fees in advance of receiving their purported cash awards and then keeping the victims' money for the defendants' and their co-conspirators' own benefit, without paying any cash award winnings to any victim.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which defendants and their co-conspirators sought to accomplish the object of the conspiracy include the following: Defendants and their co-conspirators contacted and caused to be contacted, elderly persons in the United States who were falsely informed they had won millions of dollars. Defendants and their co-conspirators persuaded and caused elderly victims to be persuaded that they needed to pay bogus fees of hundreds to thousands of dollars in order to collect their purported winnings;

Defendants and their co-conspirators, referred to victims as "clients" and purchased lists of prospective clients and client contact information from co-conspirators and others who obtained, compiled, and sold such lists in the United States and elsewhere;

Defendants and their co-conspirators sent and caused to be sent communications to elderly victims in the United States that purported to be from a genuine sweepstakes company, from financial institutions such as banks, and from federal agencies, including the FBI. Communications discussed victims' purported cash awards and winnings and were designed to hide the true nature of the conspiracy and to convince victims of the authenticity of purported winnings and fees;

Defendants and their co-conspirators contacted and caused to be contacted elderly victims who were instructed to send bogus fees in order to secure winnings. Victims were instructed how and to whom bogus fees were to be sent. Defendants and their co-conspirators instructed, encouraged and aided victims and others to wire transfer, mail, and deliver money withdrawn from federally insured and licensed financial institutions such as banks to O'HARA, O'Connor, Hogarth, Gillette, and others in Florida and elsewhere. Defendant and others in turn received, personally carried and delivered, deposited and wire transferred money via federally insured and licensed financial institutions such as banks and others, to co-conspirators in Jamaica, and to providers of client lists in the United States

and elsewhere. They often kept a portion of the fees for themselves. Other times middlemen were instructed to purchase goods in the United States and ship the goods commercially to defendants and their co-conspirators in Jamaica; or, co-conspirators and victims were instructed to send money obtained as bogus fees through the U.S. Mail and private and commercial couriers to other persons for delivery to defendants and their co-conspirators in Jamaica, and elsewhere;

Defendants and their co-conspirators used aliases such as "Newton Bennett," "Victoria O'Connor," "Pamela," and variations of names and other aliases to communicate with victims and to receive and transfer victims' money in North Dakota, South Carolina, Florida, and elsewhere;

Defendant Willocks personally and through others recruited O'HARA, O'Connor, Hogarth, and others to receive victims' money in the U.S.; to transfer money as payment for providers of "client lists;" to purchase goods with victim money and deliver and ship the goods to Willocks and his co-conspirators; to deliver and transfer money to Willocks and his co-conspirators using Western Union, Moneygram, JamUSA, and other means, and to keep a portion of the victims' money for their own benefit;

Defendant Gillette completed numerous wire transfers of money from victims in the United States to co-conspirators in Jamaica in 2012 to facilitate and promote the commission of the charged offenses;

Defendants and their co-conspirators received wire transfers of victims' money via federally insured and licensed financial institutions such as banks, and via foreign money transfer services such as JamUSA, and received victims' money and goods purchased with victims' money, in Jamaica. Other times, defendants and their co-conspirators traveled to Florida and directed others to travel to Florida to receive victims' money from middlemen and to purchase goods with victims' money and instruct middlemen to ship the purchased goods to Jamaica via commercial carrier and otherwise;

Defendants and their co-conspirators traveled from Jamaica to Florida to receive money from victims and returned with the money to Jamaica;

Defendants and their co-conspirators contacted and caused elderly victims to be contacted numerous times with requests for bogus fees. Defendants and their co-conspirators falsely told victims that their winnings depended upon receipt of the bogus fees; other times they told victims that their winnings were delayed due to administrative difficulty. The process continued for as long as the victims could be persuaded to send additional money;

Defendants and their co-conspirators used different methods designed to make their scheme appear legitimate to victims. They claimed at times to be bankers and FBI agents and they used Voice Over Internet Protocol (VOIP) as well as "magicJack" technology to make communications by telephone appear as if calls originated in the United States even when the calls originated in Jamaica;

On November 28, 2013, DEON-VILLE ANTONIO O'HARA was stopped by Jamaican Custom officials at the Sangster International Airport, Montego Bay, Jamaica. Jamaican officials discovered O'HARA had \$105,000 in US Currency in his possession which he had failed to declare upon entering Jamaica and which he had denied carrying. O'HARA falsely told Jamaican Customs officials that while he was in the United States he received a package of money as a "deposit" for a year-long tour and claimed he planned to deliver the money to a manager of "Jukeboxxproduction." Upon leaving the United States with the \$105,000, O'HARA failed to file the required forms. O'HARA and others knew the \$105,000 represented proceeds of the lottery scam.

O'HARA later emailed an image of a Jamaican Identification card of Andrew Sayeed Myrie to a receiving email address used by the conspirators. Later, in a letter to Jamaican Custom officers, "Andrew Myrie" claimed to be a manager of Uptempo International Music Records (UIM). Myrie included a copy of an alleged performance and production contract with the letter which claimed to represent a performance and production deal between UIM and Bauder. In the letter, Myrie falsely claimed O'HARA was carrying money as a deposit from Bauder for delivery to Myrie as part of UIM's contract with Bauder. The email address that was used to send a pre-addressed unsigned letter to Bauder is the receiving email address O'HARA used when he sent the image of Myrie's identification card. The letter was pre-addressed to the "Jamaica Customs Department, Sangster International Airport, Montego Bay, Jamaica" and falsely stated that Bauder was an U.S. citizen and entrepreneur who provided O'HARA "\$100,000.00 USD in cash for down payment as instructed by the booking agent for Jukeboxxproduction," but that Bauder later decided to use UMI for his "yearlong tour consisting of Artist and Selectors." The letter further claimed that O'HARA failed to declare the \$100,000 to Jamaican authorities which led to seizure of the money. Bauder signed the letter, even though he knew it was false, and on December 16, 2013, Bauder used United Parcel Service (UPS) to send the letter to an attorney in Jamaica as instructed by WILLOCKS and other conspirators. The signed letter was forwarded to Jamaican Customs authorities as instructed by Willocks and others via a conspirator identified as "David Johnson."

Defendants and their co-conspirators victimized at least 10 persons over the age of 55;

All in violation of Title 18, United States Code, Sections 1349 and 2326.

7. Defendant understands Count One carries the following maximum penalties:

Imprisonment:	40 years
Fine:	\$1,000,000
Supervised Release:	5 years
Special Assessment:	\$100

Defendant agrees to pay to the Clerk of United States District Court the \$100 special assessment on the day of sentencing.

8. Defendant understands that by pleading guilty defendant surrenders rights, including:

(a) The right to a speedy public jury trial and related rights

pertaining thereto, as follow:

(i) A jury would be composed of 12 lay persons selected at random. Defendant and defendant's attorney would help choose the rs by removing prospective jurors "for cause," where actual bias or other disqualification is shown; or by removing jurors without cause by exercising peremptory challenges. The jury would be instructed that defendant is presumed innocent and that it could not return a guilty verdict unless it found defendant guilty beyond a reasonable doubt.

(ii) If trial were held without a jury then the judge would find the facts and determine whether defendant was guilty beyond a reasonable doubt.

(iii) At a trial, whether by a jury or judge, the United States is required to present witness testimony and other evidence against defendant. Defendant's attorney can confront and examine them. In turn, the defense can present witness testimony and other evidence. If witnesses for defendant refuse to appear voluntarily, defendant can require their attendance through the subpoena power of the Court.

(iv) At trial, defendant has a privilege against self-incrimination; thus, defendant can decline to testify. No inference of guilt can be drawn from defendant's refusal to testify. Defendant can choose to testify, but cannot be required to testify.

(b) Defendant has a right to remain silent. However, under terms of the Plea Agreement, the Judge will likely ask defendant questions about defendant's criminal conduct, to ensure that there is a factual basis for defendant's plea.

9. Defendant understands that by pleading guilty defendant gives up all of the rights set forth in the prior paragraph, and there will be no trial. Defendant's attorney has explained these rights, and consequences of defendant's waiver.

10. The Court shall impose a sentence sufficient to comply with purposes set forth in the Sentencing Reform Act. In doing so, the Court shall consider factors set forth in 18 U.S.C. § 3553(a), and must consult and take into account the United States Sentencing Commission, Guidelines Manual (Nov. 2013) (USSG). Defendant understands that the United States Attorney's Office will fully apprise the District Court

and the United States Probation and Pretrial Services Office of the nature, scope, and extent of defendant's conduct, including all matters in aggravation and mitigation relevant to the issue of sentencing. The United States expressly reserves the right to appeal from an unreasonable sentence.

11. This Plea Agreement is binding only upon the United States Attorney for the District of North Dakota. It does not bind any United States Attorney outside the District of North Dakota, nor does it bind any state or local prosecutor. They remain free to prosecute defendant for any offenses under their jurisdiction. This Plea Agreement also does not bar or compromise any civil or administrative claim.

12. Defendant understands the United States Attorney reserves the right to notify any local, state, or federal agency by whom defendant is licensed, or with whom defendant does business, of defendant's conviction.

13. The parties agree that the base offense level under the Sentencing Guidelines for defendant's conduct is 7. (USSG § 2B1.1)

14. The parties agree that the defendant may have personally handled not more than approximately \$180,000 of proceeds of the scam, between about September 2013 and about November 2013. At sentencing, defendant may claim USSG "loss" amounts should be limited in a manner consistent with this time period and amount. The United States may claim total losses from the conspiracy are greater than \$400,000; thus, the following loss related upward adjustment may apply in this case:

- (a) 14 levels for a loss amount of more than \$400,000.00 (USSG § 2B1.1(b)(1)(H));
in addition to an adjustment for loss,
- (b) 2 levels for an offense involving 10 or more victims (USSG § 2B1.1(b)(2)); and
- (c) 2 levels for an offense involving a vulnerable victim (USSG § 3A1.1(b)(1)); and
- (d) 2 levels for an offense involving a substantial part of a scheme committed from
outside the United States and that involved sophisticated means (USSG
§§ 2B1.1(b)(10)(B) and (C)).

15. The parties agree that a forfeiture money judgment be entered in the amount of \$105,000 together with an amount not inconsistent with money, if any, in the defendant's possession and control at the time of defendant's arrest, which amount of money represents proceeds obtained directly or indirectly as a result of the violations.

16. At sentencing, the United States agrees to recommend a 2-level downward adjustment for acceptance of responsibility, provided defendant has demonstrated a genuine acceptance of responsibility. (USSG § 3E1.1(a)). The United States further agrees to move for an additional 1-level downward adjustment for timely notifying the United States of defendant's intention to enter a guilty plea, thus permitting the Court and the United States to allocate their resources efficiently. (USSG § 3E1.1(b)).

17. Neither the Court nor the Probation Office are parties to the Plea Agreement. Neither the Court nor the Probation Office are bound by the Plea Agreement as to determining the guidelines range. The Court may impose a reasonable sentence anywhere within the statutory range. The Court may depart from the applicable

guidelines range if the Court, on the record, states factors not contemplated by the Sentencing Guidelines Commission to justify the departure. Both parties reserve the right to object to any departure. See USSG § 1B1.1, comment. (n.1) (defines “departure”). There may be other adjustments the parties have not agreed upon.

18. At sentencing, the United States will:

- (a) recommend a sentence at the low end of the applicable Guideline range;
- (b) recommend forfeiture of \$105,000 and an amount of money, if any, found to be in the defendant’s possession and control at the time of defendant’s arrest, and recommend that defendant be ordered to pay full restitution as required by law; and
- (c) move to dismiss the remaining counts of the Third Superseding Indictment against this defendant.

19. Defendant acknowledges and understands that if defendant violates any of the term of this Plea Agreement, engages in any further criminal activity, or fails to appear for sentencing, the United States will be released from its commitments. In that event, this Plea Agreement shall become null and void, at the discretion of the United States, and defendant will face the following consequences: (1) all testimony and other information defendant has provided at any time to attorneys, employees, or law enforcement officers of the government, to the Court, or to the Federal grand jury, may be used against defendant in any prosecution or proceeding; and (2) the United States will

be entitled to reinstate previously dismissed charges and/or pursue additional charges against defendant and to use any information obtained directly or indirectly from defendant in those additional prosecutions. Nothing in this agreement prevents the United States from prosecuting defendant for perjury, false statement, or false declaration if defendant commits such acts in connection with this agreement or otherwise.

20. Defendant acknowledges the provisions of Title 18, United States Code, Sections 2259 and 3663A, which require the Court to order restitution. Defendant agrees to pay restitution as may be ordered by the Court. Defendant acknowledges and agrees that the Court will order defendant to make restitution for all loss caused by defendant's conduct, regardless of whether counts of the Superseding Indictment will be dismissed as part of this Plea Agreement. Defendant further agrees to grant the United States a wage assignment, liquidate assets, or complete any other tasks the Court finds reasonable and appropriate for the prompt payment of any restitution or fine ordered by the Court.

21. The United States agrees that USSG § 1B1.8 is applicable to defendant. Any information provided by the defendant, other than that charged in the Third Superseding Indictment, in connection with defendant's assistance to the United States, including debriefing and testimony, will not be used to increase defendant's Sentencing Guideline level or used against defendant for further prosecution, if in the opinion of the United States Attorney defendant has met all of defendant's obligations under the Plea Agreement and provided full, complete, and truthful information and testimony. However, nothing revealed by the defendant during

defendant's debriefings and testimony would preclude defendant's prosecution for any serious violent crimes.

22. The United States will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. Defendant and defendant's attorney acknowledge that no threats, promises, or representations exist beyond the terms of this plea agreement.

23. **Defendant's Waiver of Appeal.** Defendants have a right to appeal their conviction and sentence (Judgment), unless they agree otherwise. Appeals are taken to the United States Court of Appeals for the Eighth Circuit (appellate court), pursuant to Title 18, United States Code, Section 3742(a). The appellate court has ruled that defendants can waive (give up) their right to appeal. Defendants often waive their right to appeal as part of a plea agreement and in exchange for concessions by the United States. The appellate court will enforce such waivers. Defendant and defendant's attorney acknowledge they have fully reviewed and fully discussed the record in this case and all issues that may be raised on appeal. They have fully discussed defendant's right of appeal and the consequences of waiver.

Defendant has decided to waive any right of appeal, except as may be provided herein. By signing this agreement, defendant voluntarily waives defendant's right to appeal the Court's Judgment against defendant; and, absent a claim of ineffective assistance of counsel, defendant waives all rights to contest the Judgment in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section

2255. Defendant reserves only the right to appeal from a sentence that is greater than the upper limit of the Court-determined Sentencing Guidelines range.

Defendant understands that the United States was motivated by defendant's willingness to waive any right of appeal when the United States chose to offer defendant terms of a plea agreement. In other words, the United States was willing to offer certain terms favorable to defendant in exchange for finality. Defendant understands and agrees this case will be over once defendant has been sentenced by the Court. Defendant agrees that it will be a breach of this agreement if defendant appeals in violation of this agreement. The United States will rely upon defendant's waiver and breach as a basis for dismissal of the appeal. Moreover, defense counsel may reasonably conclude and inform the appellate court that an appeal is wholly frivolous. Defense counsel may then move to withdraw, citing Anders v. California, 386 U.S. 738, 744 (1967), and Smith v. Robbins, 528 U.S. 259 (2000). Defendant agrees an appeal in violation of this agreement should be dismissed.

By signing this agreement, the defendant further specifically waives defendant's right to seek to withdraw defendant's plea of guilty, pursuant to Federal Rules of Criminal Procedure 11(d), once the plea has been entered in accordance with this agreement. The appellate court will enforce such waivers. The defendant agrees that any attempt to withdraw defendant's plea will be denied and any appeal of such denial should be dismissed.

24. The Assistant United States Attorney and attorney for defendant agree to abide by the provisions of Rule 32(f) of the Federal Rules of Criminal Procedure. The attorneys acknowledge their obligation to use good-faith efforts to resolve any disputes regarding the Presentence Investigation Report (PSIR) through a presentence conference or other informal procedures.

25. Defendant acknowledges reading and understanding all provisions of the Plea Agreement. Defendant and defendant's attorney have discussed the case and reviewed the Plea Agreement. They have discussed defendant's constitutional and other rights, including, but not limited to, defendant's plea-statement rights under Rule 410 of the Federal Rules of Evidence and Rule 11(f) of the Federal Rules of Criminal Procedure.


AGREED:

TIMOTHY Q. PURDON
United States Attorney


Dated: 9-10-14 By:


CLARE R. HOCHHALTER
Assistant United States Attorney

Dated: 9-5-14


DEON-VILLE ANTONIO O'HARA
Defendant

Dated: 9-8-14


STEVEN D. MOTTINGER
Attorney for Defendant