

## Case Summary

**6:13-cr-03032-GAF All Defendants USA v. Brixey**

**Date filed: 03/26/2013**

**Date of last filing: 03/26/2013**

**Mark Brixey (1)**

**Office:** Springfield **Filed:** 03/26/2013

**County:** Greene **Terminated:**

**Reopened:**

**Other Court Case:** None

**Count:** 1 **Citation:** 18:1343.F **Offense Level:** 4  
FRAUD BY WIRE, RADIO, OR TELEVISION

**Count:** 2 **Citation:** 18:1956-4999.F **Offense Level:** 4  
MONEY LAUNDERING - FRAUD, OTHER

**Count:** 3 **Citation:** 26:7206A.F **Offense Level:** 4  
FILING MATERIALLY FALSE TAX RETURN

**Defendant Custody Status:** Released

**Defendant:** Mark Brixey **represented by** Tyson J. Martin (Designation Retained)

**Phone:** (417) 887-1155

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**Plaintiff:** USA **represented by** Michael Scott Oliver

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IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

|                           |   |                          |
|---------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, | ) |                          |
|                           | ) |                          |
| Plaintiff,                | ) |                          |
|                           | ) |                          |
| vs.                       | ) | No. 13-03032-01-CR-S-GAF |
|                           | ) |                          |
| MARK BRIXEY,              | ) |                          |
|                           | ) |                          |
| Defendant.                | ) |                          |

NOTICE REGARDING ENTRY  
OF A PLEA OF GUILTY

In the event the Defendant decides at any time before trial to enter a plea of guilty, the United States Magistrate Judge is authorized by Rule 72.1(j) (26), WDMO Rules and 28 U.S.C. §636, with the consent of the Defendant, to conduct the proceedings required by Rule 11, F.R.Cr.P. incident to the making of the plea. If, after conducting such proceedings, the Magistrate Judge recommends that the plea of guilty be accepted, a presentence investigation and report will be ordered pursuant to Rule 32, F.R.Cr.P. The assigned United States District Judge will then act on the Magistrate Judge's Report and Recommendation; and, if the plea of guilty is accepted, will adjudicate guilt and schedule a sentencing hearing at which the District Judge will decide whether to accept or reject any associated plea agreement, and will determine and impose sentence.

CONSENT

I hereby declare my intention to enter a plea of guilty in the above case, and I request and consent to the United States Magistrate Judge conducting the proceedings required by Rule 11, F.R.Cr.P., incident to the making of such plea. I understand that if I object to the Magistrate Judge's Report and Recommendation within the time period required by law, the District Judge will review de novo those portions of the report or specified proposed findings or recommendations to which objections are made; however, the time period during which the District Judge conducts the review will be excluded in computing the time within which trial must commence under the Speedy Trial Act. I also understand that if my plea of guilty is accepted by the District Judge, the District Judge will decide whether to accept or reject any plea agreement I may have with the United States, and will adjudicate guilt and impose sentence.

Date: 3-26-13

/s/ Mark Brixey  
Defendant

/s/ Tyson Martin  
Defendant's Attorney

The United States consents to the United States Magistrate Judge conducting the proceedings required by Rule 11, F.R.Cr.P., incident to the taking of a plea of guilty.

/s/ Michael S. Oliver  
Assistant United States Attorney

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
MARK BRIXEY,  
Defendant.

No. 13-03032-01-CR-S-GAF

The Defendant, by consent, has appeared before me pursuant to Rule 11, F.R.Cr.P., 22(k)(26), WDMO, and 28 U.S.C. §636, and has entered a plea of guilty to Counts One, Two, and Three and admitted to Forfeiture Allegation contained in the Information filed on March 26, 2013. After cautioning and examining the Defendant under oath concerning each of the subjects mentioned in Rule 11, I determined that the guilty pleas were knowledgeable and voluntary, and that the offenses charged are supported by a factual basis for each of the essential elements of the offenses. I therefore recommend that the pleas of guilty be accepted and that the Defendant be adjudged guilty and have sentence imposed accordingly.

Date: March 26, 2013

/s/ David P. Rush  
DAVID P. RUSH  
UNITED STATES MAGISTRATE JUDGE

NOTICE

Failure to file written objections to this Report and Recommendation within 14 days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. §636(b)(1)(B).

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

|                           |   |                          |
|---------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, | ) |                          |
|                           | ) |                          |
| Plaintiff,                | ) |                          |
|                           | ) |                          |
| v.                        | ) | No. 13-03032-01-CR-S-GAF |
|                           | ) |                          |
| MARK BRIXEY,              | ) |                          |
|                           | ) |                          |
| Defendant.                | ) |                          |

**PLEA AGREEMENT**

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. **The Parties.** The parties to this agreement are the United States Attorney's Office for the Western District of Missouri (otherwise referred to as "the Government" or "the United States"), represented by Tammy Dickinson, United States Attorney, and Michael S. Oliver, Assistant United States Attorney, and the defendant, Mark Brixey ("the defendant"), represented by Tyson J. Martin.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. **Defendant's Guilty Plea.** The defendant agrees to and hereby does plead guilty to Counts One, Two, and Three of the Information charging him with violations of 18 U.S.C. § 1343, that is, wire fraud in Count One, of 18 U.S.C. § 1956(a)(1)(B)(i), that

is money laundering in Count Two, and of 26 U.S.C. § 7206(1), that is, filing a materially false tax return in Count Two. The defendant also agrees to forfeit to the United States the property described in the Forfeiture Allegation of the Information. By entering into this plea agreement, the defendant admits that he knowingly committed these offenses, and is in fact guilty of these offenses. The defendant also agrees to pay restitution in the amount determined by the Court at sentencing.

3. **Factual Basis for Guilty Plea.** The parties agree that the facts constituting the offenses to which he is pleading guilty are as follows:

*Missouri State University, Follett Educational Services, MBS Textbook Exchange, Inc., and Nebraska Book Company*

Missouri State University (MSU) operated a bookstore which carried an inventory of textbooks available for sale to its students. At the close of each semester, MSU students had the opportunity to sell those textbooks through a Student Book Buyback Program. The MSU Bookstore also disposed of surplus textbooks or "dead books" by reselling those to textbook wholesalers.

Follett Educational Services (Follett), a subsidiary of Follett Corporation based in River Grove, Illinois, bought and sold used textbooks purchased from college students and universities. Follett contracted with MSU to administer the Student Book Buyback Program between 1998 and 2012. Follett also contracted with MSU to purchase dead books from the MSU Bookstore.

MBS Textbook Exchange Inc. (MBS) was a secondary textbook wholesaler based in Columbia, Missouri, that purchased dead books from the MSU Bookstore. On twenty-one occasions between December 2003 and August 2012, MBS purchased textbooks from the MSU Bookstore.

Nebraska Book Company (NBC) was a secondary textbook wholesaler based in Lincoln, Nebraska, that also purchased dead books from the MSU bookstore. On two occasions between November 2009 and June 2010, NBC purchased textbooks from the MSU Bookstore.

### *The Defendant*

MSU employed the defendant, MARK BRIXEY (Brixey), as the manager of the MSU Bookstore between 1998 and August 2012. As manager of the MSU Bookstore, Brixey handled all contacts related to the Follett student book buyback and the dead book buyback programs. Brixey also handled all contacts related to the purchase of books by MBS and NBC.

In order to conceal and disguise the nature, source, ownership, and control of the proceeds of his fraud scheme, the defendant routinely deposited the proceeds of his fraud scheme into Educational Community Credit Union accounts, transferred cash from those accounts to purchase and add value to Educational Community Credit Union Certificates of Deposit.

Between January 11, 2008, and July 16, 2012, Brixey made or caused to be made 55 transfers totaling \$121,000 from Educational Community Credit Union deposit accounts to Educational Community Credit Union certificates of deposit.

### *Follett Student Book Buyback Program at MSU*

Follett contracted with MSU to operate ten textbook buyback stations on the MSU campus during "finals week" in December and May of each year.

The textbook buyback stations were networked so Follett representatives had real-time updates of inventory as textbooks were purchased from students. The individuals that operated the textbook buyback stations were Follett employees. The funds utilized in the textbook buyback program were provided by Follett.

Textbooks were scanned to determine which of the three categories the books would be placed. Follett's software told the employee how much to pay the student for each book and color-coded the books. Textbooks purchased from students were sorted into the following three categories or "boxes":

- a. Requested books (Green). Books requested by MSU professors for use by the university the following semester. Students received the highest buyback price for these textbooks, which were in turn repurchased by MSU.
- b. Wholesale books (Grey). If MSU had filled its inventory needs of a particular textbook, then the remaining

textbooks were purchased from the students by Follett at wholesale prices lower than the prices paid for books being repurchased by MSU.

- c. Recycled books (Red). These books were damaged or no longer used by MSU or any university supplied by Follett.

Requested books, which were repurchased by MSU, received a bar code label so that it was immediately added to the MSU Bookstore inventory and placed on a shelf.

Wholesale books, which were the property of Follett, were placed on pallets for shipping to Follett's headquarters at the MSU Bookstore. A Follett representative counted the number of boxes to be shipped to Follett and arranged the shipment. An MSU Bookstore employee then shrink-wrapped the boxes for shipment.

On the last day of the buyback program each December and May between at least 2003 and July 2012, a Follett representative prepared a "dollars spent report," which detailed how many textbooks were purchased and at what price by MSU and by Follett. A Follett representative also calculated the commissions to be paid to MSU for allowing Follett to conduct the textbook buyback program at the university. Finally, up and until a time in 2011, a Follett representative gave a sight draft/check to Brixey, for payment of the commission to MSU. Subsequently, the Follett representative paid the commissions in cash directly to Brixey.

Also on the last day of the buyback program each December and May between at least 2003 and July 2012, books were purchased from MSU male and female athletes. Follett separately accounted for these sales and gave a sight draft/check to Brixey as payment for these books.

#### *The Follett Dead Book Buyback Program at MSU*

Follett also purchased dead books, which were textbooks no longer used by MSU professors, directly from the MSU Bookstore. In turn, Follett supplied the dead books to another university that still utilized the particular textbook.

Similar to the student book buyback program, a Follett representative calculated the total amount to be paid to MSU for these dead books, and gave a sight draft/check to Brixey.

*The Defendant's Scheme to Defraud*

When Brixey received sight drafts/checks payable to MSU for commissions generated from the Follett Student Book Buyback Program, he took those checks to the MSU Bursar's Office.

When Brixey received sight drafts/checks payable to MSU related to the purchase of books from MSU Men's and Women's athletes, he took those checks to the MSU Bursar's Office.

When Brixey received sight drafts/checks payable to MSU for the purchases in the Follett Dead Book Buyback Program, he took those checks to the MSU Bursar's Office.

When Brixey received checks payable to MSU for purchases made by MBS and NBC, he took those checks to the MSU Bursar's Office.

In each instance, Brixey represented to the Bursar's Office that the sight drafts/checks were needed to pay students for books purchased in the Follett Student Book Buyback Program. The Bursar's Office relied upon Brixey's material misrepresentations and provided cash to Brixey.

Brixey did not record the cash received in the MSU Bookstore accounting system. Brixey used the cash for his personal benefit.

Between December 19, 2003, and July 2, 2012, the defendant obtained approximately \$1,163,237.39 in moneys due and owing to MSU for books purchased from the university by Follett, MBS, and NBC, and for commissions owed by Follett as follows:

| <u>Year</u> | <u>Embezzled Funds</u> |
|-------------|------------------------|
| 2012        | \$20,580.96            |
| 2011        | \$192,202.43           |
| 2010        | \$194,520.79           |
| 2009        | \$166,353.71           |
| 2008        | \$137,905.00           |
| 2007        | \$131,342.05           |
| 2006        | \$103,835.20           |
| 2005        | \$105,621.20           |
| 2004        | \$81,929.95            |
| <u>2003</u> | <u>\$28,946.10</u>     |
| Total       | \$1,163,237.39         |

*Acts Relevant to Count 1*

On or about December 17, 2010, the defendant executed the above-described scheme to cause electronic transmissions related to the processing of sight drafts 338531, 338532, 338433, and 338534, in connection with the commissions and the purchase of textbooks and through which he obtained approximately \$58,213.65, all in violation of Title 18, United States Code, Sections 1343 and 2.

*Acts Relevant to Count 2*

On or about March 16, 2011, the defendant, knowingly conducted and attempted to conduct a financial transaction affecting interstate and foreign commerce, that is, transferred \$1,000 from Educational Community Credit Union account 4809007-Suffix A, to Educational Community Credit Union Certificate of Deposit Suffix L, #91674, which involved the proceeds of a specified unlawful activity, that is, wire fraud, knowing that the transaction was designed in whole and in part to conceal and disguise, the nature, source, ownership, and control of the proceeds of said specified unlawful activity and that while conducting and attempting to conduct such financial transaction knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, all in violation of Title 18 United States Code Sections 1956(a)(1)(B)(i) and 2.

*Acts Relevant to Count 3*

On or about April 18, 2011, the defendant, did willfully make and subscribe a U.S. Individual Tax Return, Form 1040, for the year 2010, which contained a written declaration that it was made under the penalties of perjury and was filed with the Director, Internal Revenue Service Center at Kansas City, Missouri, which said tax return defendant did not believe to be true and correct as to every material matter in that defendant failed to report approximately \$194,521 in income received through the scheme to defraud described in Count One of this information, during the year 2010, in violation of Title 26, United States Code, Section 7206(1).

The 2009, 2010, and 2011 Forms 1040, U.S. Individual Income Tax Return, filed by the defendant contained the jurat, "under penalties of perjury, I declare that I have examine this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which prepare has any knowledge"

The defendant did not believe the return to be true and correct as to every material matter because he failed to report \$194,521 of income from his scheme to defraud.

The defendant signed the tax returns knowing the income was significantly underreported.

The defendant concealed his scheme to defraud by disguising the proceeds through multiple financial transactions.

The defendant deposited a portion of the embezzled funds into his personal credit union account at Educational Community Credit Union

The defendant also filed a 2009, Form 1040, U.S. Individual Income Tax Return, which was false as to a material matter in that on line 21 of the tax return, the defendant failed to report \$166,354 of income from his scheme to defraud.

The defendant also filed a 2011, Form 1040, U.S. Individual Income Tax Return, which was false as to a material matter in that on line 21 of the tax return, the defendant failed to report \$192,202 of income from his scheme to defraud.

In total between 2009 and 2011, the defendant failed to report \$553,077, of income from the scheme to defraud he devised while employed as the bookstore director for MSU. As a result of the defendant's actions, the tax loss to the government was approximately \$166,247 for 2009, 2010, and 2011.

4. Use of Factual Admissions and Relevant Conduct. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines ("U.S.S.G."), including the calculation of the defendant's offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment as well as all other

uncharged related criminal activity may be considered as “relevant conduct” pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charges to which he is pleading guilty.

5. **Statutory Penalties.** The defendant understands that upon his plea of guilty to Count One of the Information charging him with wire fraud, the maximum penalty the Court may impose is not more than 20 years of imprisonment, the greater of \$250,000 or twice the gross gain fine, not more than 3 years of supervised release, an order of mandatory restitution and a \$100 mandatory special assessment per felony count of conviction which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class C felony.

The defendant further understands that upon his plea of guilty to Count Two of the Information charging him with money laundering, the maximum penalty the Court may impose is not more than 20 years of imprisonment, the greater of \$500,000 or twice the gross gain fine, not more than 3 years of supervised release, an order of mandatory restitution and a \$100 mandatory special assessment per felony count of conviction which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class C felony.

The defendant understands that upon his plea of guilty to Count Three of the Information charging him with filing a materially false tax return, the maximum penalty the Court may impose is not more than 3 years of imprisonment, a \$100,000 fine, not more than 1 year of supervised release, an order of restitution and a \$100 mandatory

special assessment per felony count of conviction which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class E felony.

6. **Sentencing Procedures.** The defendant acknowledges, understands and agrees to the following:

- a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";
- b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;
- c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to three years on Counts One and Two and up to one year on Count Three; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;
- d. if the defendant violates a condition of his supervised release, the Court may revoke his supervised release and impose an additional period of imprisonment of up to two years (Counts One and Two) and up to one year (Count Three) without credit for time previously spent on supervised release. In addition to a new term of imprisonment, the Court also may impose a new period of supervised release, the length of which cannot exceed three years (Counts One and Two) and one year (Count Three), less the term of imprisonment imposed upon revocation of the defendant's first supervised release;
- e. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;
- f. any sentence of imprisonment imposed by the Court will not allow for parole;
- g. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the

Sentencing Guidelines range offered by the parties or the United States Probation Office;

h. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court;

i. The defendant agrees that the United States may institute civil, judicial or administrative forfeiture proceedings against all forfeitable assets in which the defendant has an interest, and that he will not contest any such forfeiture proceedings;

j. The defendant agrees to forfeit all interests he owns or over which he exercises control, directly or indirectly, in any asset that is subject to forfeiture to the United States either directly or as a substitute for property that was subject to forfeiture but is no longer available for the reasons set forth in 21 U.S.C. § 853(p) (which is applicable to this action pursuant to 28 U.S.C. § 2461(c), including but not limited to the following specific property: the property listed in the Forfeiture Allegation of the Information. With respect to any asset which the defendant has agreed to forfeit, the defendant waives any constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment to the United States Constitution;

k. The defendant agrees to fully and truthfully disclose the existence, nature and location of all assets forfeitable to the United States, either directly or as a substitute asset, in which he, his co-defendants and his co-conspirators have or had any direct or indirect financial interest, or exercise or exercised control, directly or indirectly, during the period from 2003 to the present. The defendant also agrees to fully and completely assist the United States in the recovery and forfeiture of all such forfeitable assets;

l. The defendant agrees not to contest the transfer of the property identified in the Forfeiture Allegation of the Information from any state or local agency to the United States and to take whatever steps are necessary to facilitate that transfer. The defendant specifically agrees and authorizes any state or local law enforcement agency having possession of property subject to federal forfeiture to release the property to a federal agency either prior to or after entry of an order forfeiting the defendant's interest in such property. Further, the defendant agrees to hold harmless any state or local law enforcement agency which releases such property to any federal agency for federal forfeiture proceedings;

m. The defendant agrees to take all necessary steps to comply with the forfeiture matters set forth herein before his sentencing;

n. The defendant states that he is the sole and rightful owner of the property identified in the Forfeiture Allegation of the Information and that to the best of his knowledge no one else has any ownership or other interest in the property. In the event any federal, state or local law enforcement agency having custody of the property decides not to pursue forfeiture of the property due to its minimal value, the defendant hereby abandons any interest he has in such property and consents to the destruction or any other disposition of the property by the federal, state or local agency without further notice or obligation whatsoever owing to the defendant;

o. Within 10 days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit (1) a Tax Information Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that the United States will use the financial information when making its recommendation to the Court regarding the defendant's acceptance of responsibility; and,

p. At the request of the USAO, the defendant agrees to undergo any polygraph examination the United States might choose to administer concerning the identification and recovery of forfeitable assets and restitution.

7. **Government's Agreements.** Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant or his spouse for any federal criminal offenses related to the wire fraud, money laundering, and tax fraud schemes for which it has venue and which arose out of the defendant's conduct described above.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical

or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. **Preparation of Presentence Report.** The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the counts to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any

recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. **Withdrawal of Plea.** Either party reserves the right to withdraw from this plea agreement for any or no reason at any time prior to the entry of the defendant's plea of guilty and its formal acceptance by the Court. In the event of such withdrawal, the parties will be restored to their pre-plea agreement positions to the fullest extent possible. However, after the plea has been formally accepted by the Court, the defendant may withdraw his pleas of guilty only if the Court rejects the plea agreement or if the defendant can show a fair and just reason for requesting the withdrawal. The defendant understands that if the Court accepts his plea of guilty and this plea agreement but subsequently imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

10. **Agreed Guidelines Applications.** With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. Pursuant to U.S.S.G. Chapter 3, Part D, Counts 1, 2, and 3 are closely related counts.

- c. The applicable Guidelines section for the offense of conviction is U.S.S.G. § 2S1.1, which provides for a base offense level of 25 (pursuant to a reference to U.S.S.G. § 2B1.1, which provides for a base offense level of 7 (a)(1), a 16-level upward adjustment for a loss amount over \$1 million (b)(1)(I), and a 2-level upward adjustment for a misrepresentation that the defendant acted on behalf of an educational organization (b)(9)(a));
- d. Section 2S1.1(b)(2)(B) provides for a 2-level upward adjustment for the defendant's conviction under 18 U.S.C. § 1956.
- e. Section 3B1.3 provides for another 2-level upward adjustment for the defendant's abuse of a position of trust;
- f. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. Therefore, he is entitled to a three-level reduction pursuant to § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect, unless the defendant (1) fails to abide by all of the terms and conditions of this plea agreement and his pretrial release; or (2) attempts to withdraw his guilty plea[s], violates the law, or otherwise engages in conduct inconsistent with his acceptance of responsibility;
- g. There is no agreement between the parties regarding the defendant's criminal history category. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;
- h. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in Paragraph 9 of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;
- i. The Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not "unreasonable";

j. The defendant consents to judicial fact-finding by a preponderance of the evidence for all issues pertaining to the determination of the defendant's sentence, including the determination of any mandatory minimum sentence (including the facts that support any specific offense characteristic or other enhancement or adjustment), and any legally authorized increase above the normal statutory maximum. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the information. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence, may consider any reliable information, including hearsay; and,

k. The defendant understands and agrees that the factual admissions contained in Paragraph 3 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed-upon Guidelines calculations contained in this agreement.

11. **Effect of Non-Agreement on Guidelines Applications.** The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.
12. **Change in Guidelines Prior to Sentencing.** The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. **Government's Reservation of Rights.** The defendant understands that the

United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the information;
- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed and that the United States remains free on appeal or collateral proceedings to defend the legality and propriety of the sentence actually imposed, even if the Court chooses not to follow any recommendation made by the United States; and,
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

14. **Waiver of Constitutional Rights.** The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against him;
- e. the right to compel or subpoena witnesses to appear on his behalf; and,
- f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to a felony offense and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

15. **Waiver of Appellate and Post-Conviction Rights.**

a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement, except on grounds of (1) ineffective assistance of counsel; or (2) prosecutorial misconduct.

b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except claims of (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An "illegal sentence" includes a sentence imposed in excess of the statutory maximum, but does *not* include less serious sentencing errors, such as a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

16. **Financial Obligations.** By entering into this plea agreement, the defendant represents that he understands and agrees to the following financial obligations:

- a. The Court must order restitution to the victims of the offense to which the defendant is pleading guilty. The defendant agrees that the Court may order restitution in connection with the conduct charged in any counts of the information which are to be dismissed and all other uncharged related criminal activity.
- b. The United States may use the Federal Debt Collection Procedures Act and any other remedies provided by law to enforce any restitution order that may be entered as part of the sentence in this case and to collect any fine.
- c. The defendant will fully and truthfully disclose all assets and property in which he has any interest, or over which the defendant exercises control directly or indirectly, including assets and property held by a spouse, nominee or other third party. The defendant's disclosure obligations are ongoing, and are in force from the execution of this agreement until the defendant has satisfied the restitution order in full.
- d. Within 10 days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit (1) a Tax Information Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that compliance with these requests will be taken into account when the United States makes a recommendation to the Court regarding the defendant's acceptance of responsibility.
- e. At the request of the USAO, the defendant agrees to undergo any polygraph examination the United States might choose to administer concerning the identification and recovery of substitute assets and restitution.
- f. The defendant hereby authorizes the USAO to obtain a credit report pertaining to him to assist the USAO in evaluating the defendant's ability to satisfy any financial obligations imposed as part of the sentence.
- g. The defendant understands that a Special Assessment will be imposed as part of the sentence in this case. The defendant promises to pay the Special Assessment of \$300 by submitting a satisfactory form of payment to the Clerk of the Court prior to appearing for the sentencing proceeding in this case. The defendant agrees to provide the Clerk's receipt as evidence of his fulfillment of this obligation at the time of sentencing.

h. The defendant certifies that he has made no transfer of assets or property for the purpose of (1) evading financial obligations created by this Agreement; (2) evading obligations that may be imposed by the Court; nor (3) hindering efforts of the USAO to enforce such financial obligations. Moreover, the defendant promises that he will make no such transfers in the future.

i. In the event the United States learns of any misrepresentation in the financial disclosure statement, or of any asset in which the defendant had an interest at the time of this plea agreement that is not disclosed in the financial disclosure statement, and in the event such misrepresentation or nondisclosure changes the estimated net worth of the defendant by ten thousand dollars (\$10,000.00) or more, the United States may at its option: (1) choose to be relieved of its obligations under this plea agreement; or (2) let the plea agreement stand, collect the full forfeiture, restitution, and fines imposed by any criminal or civil judgment, and also collect 100% (one hundred percent) of the value of any previously undisclosed assets. The defendant agrees not to contest any collection of such assets. In the event the United States opts to be relieved of its obligations under this plea agreement, the defendant's previously entered pleas of guilty shall remain in effect and cannot be withdrawn.

17. **Waiver of FOIA Request.** The defendant waives all of his 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. **Waiver of Claim for Attorney's Fees.** The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

19. **Defendant's Breach of Plea Agreement.** If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for

sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

20. **Defendant's Representations.** The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys or any other party to induce him to enter his plea of guilty.

21. **IRS Authority To Use Restitution Order as the Basis for a Civil Assessment.**

If the Court orders the defendant to pay restitution to the IRS for the failure to pay tax, either directly as part of the sentence or as a condition of supervised release, the IRS will use the restitution order as the basis for a civil assessment, pursuant to 26 U.S.C. § 6201(a)(4). The defendant does not have the right to challenge the amount of this assessment. *See* 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor the defendant's timely payment of restitution according to that schedule will preclude the IRS from administrative collection of the restitution-based assessment, including levy and distraint under 26 U.S.C. § 6331.

22. **No Undisclosed Terms.** The United States and defendant acknowledge and agree that the above-stated terms and conditions, together with any written supplemental agreement that might be presented to the Court in camera, constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement or any written supplemental agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

23. **Standard of Interpretation.** The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed

against either party, whether or not that party was involved in drafting or modifying this agreement.

Tammy Dickinson  
United States Attorney

03/26/13  
Dated: \_\_\_\_\_

*/s/ Michael S. Oliver*

Michael S. Oliver  
Assistant United States Attorney

I have consulted with my attorney and fully understand all of my rights with respect to the offenses charged in the information. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement and I voluntarily agree to it.

03/26/13  
Dated: \_\_\_\_\_

*/s/ Mark Brixey*

Mark Brixey  
Defendant

I am defendant Mark Brixey's attorney. I have fully explained to him his rights with respect to the offenses charged in the information. Further, I have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, Mark Brixey's decision to enter into this plea agreement is an informed and voluntary one.

03/26/13  
Dated: \_\_\_\_\_

*/s/ Tyson J. Martin*

Tyson J. Martin  
Attorney for Defendant