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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

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BY D. MARK JONES, CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, : Case No. 2:07-CR-00421-DAK
Plaintiff, :
vs. : STATEMENT BY DEFENDANT IN
DOUGLAS MORBY, : ADVANCE OF PLEA OF GUILTY
Defendant. : Judge Dale A. Kimball

I hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights, and that I have had the assistance of counsel in reviewing, explaining, and completing this form:

1. As part of this agreement with the United States, I intend to plead guilty to Count 1 of the Indictment. My attorney has explained the nature of the charges against me, and I have had an opportunity to discuss the nature of the charges with my attorney. I understand the charge and what the government is required to prove in order to convict me.

The elements of Count 1 are:

First, I and at least one person agreed to commit mail fraud in violation of 18 U.S.C. § 1341 and willful failure to pay over employment taxes in violation of 26 U.S.C. § 7202 and 18 U.S.C. § 2(b);

Second, I knew the essential objectives of the conspiracy;

Third, I knowingly and voluntarily participated in the conspiracy;

Fourth, either I or one of my co-conspirator engaged in at least one overt act in furtherance of the conspiracy's objectives; and

Fifth, I and my co-conspirators intended to act together for our shared benefit within the scope of the conspiracy.

2. I know that the maximum possible penalty provided by law for Count 1 of the Indictment a violation of 18 U.S.C. § 371 (Conspiracy), is a term of imprisonment of five (5) years, a fine of \$250,000.00, and a term of supervised release of three (3) years. I understand that if the supervised release term is violated, I can be returned to prison for the length of time provided in 18 U.S.C. § 3583(e)(3). Additionally, I know the Court is required to impose an assessment in the amount of \$100.00 for the offense of conviction pursuant to 18 U.S.C. § 3013. Furthermore, restitution to the victims of my offense shall be ordered pursuant to 18 U.S.C. § 3663A.

3. I know that the sentencing procedures in this case and the ultimate sentence will be determined pursuant to 18 U.S.C. § 3553(a), and that the Court must consider, but is not bound by, the United States Sentencing Guidelines, in determining my sentence. I have discussed these procedures with my attorney. I also know that the final calculation of my sentence by the Court may differ from any calculation the United States, my attorney, or I may have made, and I will not be able to withdraw my plea if this occurs.

4. I know that I can be represented by an attorney at every stage of the proceeding, and I know that if I cannot afford an attorney, one will be appointed to represent me.

5. I know that I have a right to plead "Not Guilty," and I know that if I do plead "Not Guilty", I can have a trial.

6. I know that I have a right to a trial by jury, and I know that if I stand trial by a jury:

- (a) I have a right to the assistance of counsel at every stage of the proceeding.
- (b) I have a right to see and observe the witnesses who testify against me.
- (c) My attorney can cross-examine all witnesses who testify against me.
- (d) I can call witnesses to testify at trial, and I can obtain subpoenas to require the attendance and testimony of those witnesses. If I cannot afford to pay for the appearance of a witness and mileage fees, the government will pay them.
- (e) I cannot be forced to incriminate myself, and I do not have to testify at any trial.
- (f) If I do not want to testify, the jury will be told that no inference adverse to me may be drawn from my election not to testify.

- (g) The government must prove each and every element of the offense charged against me beyond a reasonable doubt.
- (h) It requires a unanimous verdict of a jury to convict me.
- (i) If I were to be convicted, I could appeal, and if I could not afford to appeal, the government would pay the costs of the appeal, including the services of appointed counsel.

7. If I plead guilty, I will not have a trial of any kind.

8. I know that 18 U.S.C. § 3742(a) sets forth the circumstances under which I may appeal my sentence. However, fully understanding my right to appeal my sentence, and in consideration of the concessions and/or commitments made by the United States in this plea agreement, I knowingly, voluntarily and expressly waive my right to appeal as set forth in paragraph 12 below.

9. I know that 18 U.S.C. § 3742(b) sets forth the circumstances under which the United States may appeal my sentence.

10. I know that under a plea of guilty the judge may ask me questions under oath about the offense. The questions, if asked on the record and in the presence of counsel, must be answered truthfully and, if I give false answers, I can be prosecuted for perjury.

11. I stipulate and agree that the following facts accurately describe my conduct. These facts provide a basis for the Court to accept my guilty plea and for calculating the sentence in my case:

From on or about June 30, 2001 to on or about February 1, 2003 (the "period of the conspiracy"), I was the Chief Operating Officer and a primary owner of Provident Management Group, formerly Paysource, LLC (collectively, "PMG"), a payroll servicing business with offices in Utah and Arizona. One of the services PMG provided for its clients was the collection and payment of federal payroll taxes. PMG represented to its clients that the federal payroll taxes it collected would be paid to the Internal Revenue Service ("IRS"). Scott Boley, the President of PMG, Robert Langford, the chief financial officer of PMG, and I all understood that PMG made this representation to all of its clients and potential clients.

During the period of the conspiracy, PMG operated both a trust account and a general account. Money from clients was transferred regularly from the trust account to the general account. In that regard, trust funds such as employee withholding taxes were not segregated or protected from withdrawal from the general or trust accounts for uses other than the payment of federal payroll taxes. These accounts served

both PMG's Utah and Arizona operations and were overseen by Robert Langford.

Throughout the period of the conspiracy, PMG's cash flow was insufficient to meet its ongoing business expenses. In response to this situation, Scott Boley, Robert Langford, and I jointly decided and agreed to use client funds designated for federal tax withholding payments to meet PMG's ongoing business expenses. The diversion of such funds without our clients' knowledge or authorization was the primary objective of the conspiracy and in violation of our service agreements with clients. In addition to meeting PMG's business expenses, the diverted funds also were used to acquire real estate and pay the expenses of a separate business called Xcavate in an effort to raise additional business capital for PMG's business needs. In doing so, we knowingly failed to make the required tax withholding payments to the IRS on behalf of our clients.

Throughout the period of the conspiracy, PMG filed quarterly IRS Form 941s on behalf of clients reflecting federal tax withholdings due and owing to the IRS. The Form 941s were completed and filed with the IRS using PMG's business address as a return address, resulting in IRS tax delinquency notices being sent to PMG as opposed to our clients. The use of PMG's business address on the Form 941s was an established business practice that had the effect of preventing clients from learning about their increasing tax delinquencies. PMG never forwarded the IRS tax delinquency notices to its clients to avoid the clients' discovery of the growing tax delinquencies. Throughout the period of the conspiracy, Scott Boley, Robert Langford, and I communicated on an almost daily basis about the financial decisions of PMG, including the fact that clients' withholding taxes were not being paid and deciding which clients' withholding taxes should be paid and which taxes should not be paid. We acted together for our shared benefit in furtherance of the primary objective of the conspiracy to divert client funds without their knowledge or authorization.

On or about July 31, 2002, Scott Boley, Robert Langford, and I caused to be sent to the IRS using the United States mails an IRS Form 941 for AKI Industries, Inc. ("AKI"), a client of PMG, reflecting a federal tax withholding due and owing to the IRS. We diverted AKI's funds intended to pay the foregoing tax to meet PMG's ongoing business expenses. The address for AKI Industries, Inc. on the Form 941 was PMG's business address. As a result, the IRS tax delinquency notice for AKI Industries, Inc. caused by the foregoing diversion was sent to PMG and not forwarded thereafter to AKI. The foregoing acts were taken in furtherance of the primary objective of the conspiracy to divert client funds without their knowledge.

The above acts occurred in the District of Utah.

12. The only terms and conditions pertaining to this plea agreement between the defendant and the United States are as follows:

(a) The defendant agrees as follows:

- (1) I will plead guilty to count 1 of the Indictment.
- (2) Fully understanding my limited right to appeal my sentence, as explained above in paragraph 8, and in consideration of the concessions and/or commitments made by the United States in this plea agreement, I knowingly, voluntarily, and expressly waive my right to appeal any sentence imposed upon me, and the manner in which the sentence is determined, on any of the grounds set forth in 18 U.S.C. § 3742 or on any ground whatever, except I do not waive my right to appeal (1) a sentence above the maximum penalty provided in the statute of conviction as set forth in paragraph 2 above; and (2) a sentence above the high-end of the guideline range as determined by the district court at sentencing, or, in the event that no such determination is made by the district court, a sentence above the high-end of the guideline range as set forth in the final presentence report;

I also knowingly, voluntarily, and expressly waive my right to challenge my sentence, and the manner in which the sentence is determined, in any collateral review motion, writ or other procedure, including but not limited to a motion brought under 28 U.S.C. § 2255;

I understand that this waiver of my appeal and collateral review rights concerning my sentence shall not affect the government's right to appeal my sentence pursuant to 18 U.S.C. § 3742(b). However, I understand that the United States agrees that if it appeals my sentence, I am released from my waiver; and

I further understand and agree that the word "sentence" appearing throughout this waiver provision is being used broadly and applies to all aspects of the Court's sentencing authority, including, but not limited to: (1) sentencing determinations; (2) the imposition of imprisonment, fines, supervised release, probation, and any specific terms and conditions thereof; and (3) any orders of restitution.

- (3) If the Court finds that I failed to fulfill my obligations under this plea agreement, or if I withdraw my plea of guilty, I shall assert no claim under the United States

Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that my statements pursuant to this agreement, or any leads derived therefrom, should be suppressed or are inadmissible at any trial, hearing, or other proceeding.

- (4) I agree to truthfully and completely execute a Financial Statement of Debtor Form (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office, regarding all details of my financial circumstances. I understand that providing false or incomplete information, or refusing to provide this information, may be used as a basis for the denial of a reduction for acceptance of responsibility pursuant to Sentencing Guideline § 3E1.1, and as a basis for an enhancement of my sentence for obstruction of justice under Sentencing Guideline § 3C1.1.
- (5) I agree that, pursuant to the provisions of 18 U.S.C. § 3663A(a)(1) and (c)(1)(A)(ii), I am obligated to make restitution and the Court is obligated to order that I pay it. I understand and agree that the Court will determine at sentencing the final amount of restitution I must pay. In addition:
- (a) I understand that the amount of restitution will be determined as a part of the sentencing proceedings in accordance with the provisions of 18 U.S.C. § 3664, and that under 18 U.S.C. § 3664(h), the Court can make me liable for the full amount of restitution owed. I agree to pay all restitution as ordered by the Court. I understand the payment of restitution is governed by 18 U.S.C. § 3664, and my lawyer has explained the consequences of an order of restitution.
- (b) I agree to pay restitution during any period of incarceration imposed on me. I understand and agree that payment of any restitution owed should be a condition of any term of probation or supervised release imposed upon me. I know that if I fail to pay, the failure can be considered a violation of probation or supervised release and, pursuant to 18 U.S.C. § 3614, the Court can resentence me to any sentence which might originally have been imposed in my case.

(b) The United States agrees as follows:

(1) To recommend that the defendant's offense level under the Sentencing Guidelines be decreased by two levels for acceptance of responsibility pursuant to Sentencing Guideline § 3E1.1(a) if, in the opinion of the United States, the defendant clearly demonstrates acceptance of responsibility for his offenses, up to and including at the time of sentencing, as set forth in § 3E1.1 of the Sentencing Guidelines and paragraph 12(a)(3) above. In addition:

(a) The United States further agrees to move for an additional one-level reduction in the defendant's offense level, in accordance with Sentencing Guideline § 3E1.1(b), if the defendant qualifies for a two-level reduction under § Section 3E1.1(a) and the defendant's offense level is 16 or greater prior to receiving the two-level reduction.

(2) To recommend at sentencing that the defendant be sentenced at the low-end of the final advisory guideline range under the U.S. Sentencing Guidelines as determined by the Court. The United States' agreement is based on the present facts and circumstances, and if the facts change, the United States shall not be bound by this provision.

(3) To seek leave of Court at sentencing to dismiss counts 2 through 45 of the Indictment as against the defendant.

* * * *

I make the following representations to the Court:

1. I am 50 years of age. My education consists of DUBA.
I can read and understand English.
2. This Statement in Advance contains all terms of the agreements between me and the government; if there are exceptions, the Court will be specifically advised, on the record, at the time of my guilty plea of the additional terms. I understand the government and I cannot have terms of this plea agreement that are not disclosed to the Court.
3. No one has made threats, promises, or representations to me that have caused me to plead guilty.

4. Neither my attorney nor the government has represented to me that I would receive probation or any other form of leniency because of my plea.
5. I have discussed this case and this plea with my lawyer as much as I wish, and I have no additional questions.
6. I am satisfied with my lawyer.
7. My decision to enter this plea was made after full and careful thought; with the advice of counsel; and with a full understanding of my rights, the facts and circumstances of the case, and the consequences of the plea. I was not under the influence of any drugs, medication, or intoxicants when the decision to enter my plea was made, and I am not now under the influence of any drugs, medication, or intoxicants.
8. I have no mental reservations concerning the plea.
9. I understand and agree to all of the above. I know that I am free to change or delete anything contained in this Statement in Advance. I do not wish to make changes to this agreement because I agree with the terms and all of the statements are correct.

DATED this 4 day of March, 2008.

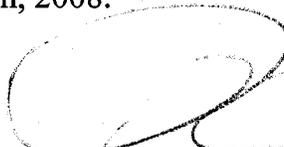


DOUGLAS MORBY
Defendant

Attorney Certification

I certify that I have discussed this Statement in Advance with the defendant, that I have fully explained his rights to him, and I have assisted him in completing this form. I believe that he is knowingly and voluntarily entering the plea with full knowledge of his legal rights and that there is a factual basis for the plea.

DATED this 7th day of March, 2008.



REBECCA C. HYDE
Attorney for Defendant

I represent that all terms of the plea agreement between the defendant and the government have been, or will be at the plea hearing, disclosed to the Court, and there are no off-the-record agreements between the defendant and the United States.

DATED this 7th day of March, 2008.

BRETT L. TOLMAN
United States Attorney



SCOTT J. THORLEY
MARK Y. HIRATA
Assistant United States Attorneys