

COMPOSITE EXHIBIT 4

JUDGE KOELTL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

ARTHUR G. NADEL,

Defendant.

09 CRIM 433

INDICTMENT

09 Cr.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: APR 28 2009

COUNTS ONE THROUGH SIX
(Securities Fraud)

The Grand Jury charges:

Relevant Entities and Individuals

1. At certain times relevant to this Indictment, Scoop Management, Inc., was a general partnership with its principal place of business in Sarasota, Florida.

2. At certain times relevant to this Indictment, Scoop Capital LLC was a general partnership with its principal place of business in Sarasota, Florida.

3. At certain times relevant to this Indictment, Scoop Capital LLC was the general partner of Victory IRA Fund Ltd., Scoop Real Estate LP, and Victory Fund Ltd. Victory IRA Fund Ltd. was a limited partnership with its principal place of business in Sarasota, Florida. Scoop Real Estate LP was a limited partnership with its principal place of business in Sarasota, Florida.

Victory Fund Ltd. was a limited partnership with its principal place of business in Sarasota, Florida.

4. At certain times relevant to this Indictment, Valhalla Management, Inc., was a general partnership with its principal place of business in Sarasota, Florida. Valhalla Management, Inc., was the general partner of Valhalla Investment Partners, which was a limited partnership, with its principal place of business in Sarasota, Florida.

5. At certain times relevant to this Indictment, Viking Management LLC was a limited liability company with its principal place of business in Sarasota, Florida. Viking Management LLC was the general partner of Viking Fund, LLC, and Viking IRA Fund, LLC, which were limited partnerships formed on or about March 15, 2001, with their principal places of business in Sarasota, Florida.

6. At all times relevant to this Indictment, ARTHUR G. NADEL, the defendant, was responsible for the purchases and sales of securities in the following investment funds: (a) Victory IRA Fund Ltd.; (b) Scoop Real Estate LP; (c) Victory Fund Ltd.; (d) Valhalla Investment Partners; (e) Viking Fund, LLC; and (f) Viking IRA Fund, LLC (collectively the "Funds"). NADEL also controlled, operated, and managed Scoop Management, Inc., and Scoop Capital LLC.

7. From at least in or about 1999 through in or about January 2009, ARTHUR G. NADEL, the defendant, purchased and sold securities in the Funds through the New York, New York, office of a brokerage firm ("Brokerage Firm"). At all times relevant to this Indictment, NADEL executed trades based on an exchange traded fund listed on the National Association of Securities Dealers Automated Quotations ("NASDAQ") that was intended to track the NASDAQ index.

The Scheme to Defraud

8. From at least in or about 1999 through in or about January 2009, ARTHUR G. NADEL, the defendant, perpetrated a scheme to defraud the investors of the Funds by soliciting hundreds of millions of dollars of funds under false pretenses, failing to invest the money as promised, falsely claiming that his purchases and sales of securities resulted in high rates of returns, and misappropriating and converting investor funds for his own benefit and the benefit of others without the knowledge and authorization of investors.

9. To execute the scheme, ARTHUR G. NADEL, the defendant, solicited and caused others to solicit prospective clients to invest their money in the Funds based upon, among other things, his false statements that: (a) the investor funds would be used to purchase and sell securities; (b) the performance of each of the Funds was consistently positive; and (c) the net asset

value of each of the Funds was tens of millions of dollars.

Based, in part, on these misrepresentations from in or about 1999 through in or about January 2009, clients invested at least approximately \$360 million into the Funds.

10. In truth and in fact, as ARTHUR G. NADEL, the defendant, well knew, these representations were false. Notwithstanding NADEL's statements to the contrary, and notwithstanding false representations that NADEL made and caused to be made on investor account statements and other documents sent through the United States Postal Service (the "Postal Service") to investors in the Funds throughout the operation of this scheme, NADEL misappropriated investor funds and converted them for personal use for NADEL, NADEL's family, and NADEL's businesses. Moreover, notwithstanding NADEL's statements to investors and others that each of the Funds had consistently positive rates of return of between approximately 18 percent and 48 percent each year, the performance of the Funds was not consistently positive and the rates of return were substantially and materially less.

11. From at least in or about 1999 through in or about January 2009, ARTHUR G. NADEL, the defendant, also falsely represented to investors that his purchases and sales of securities in the Funds had generated cumulatively more than \$271 million in gains. In truth and in fact, as NADEL well knew, during this period of time, NADEL's trading resulted in an overall

net loss in the Funds. For example, in or about September 2008, NADEL caused documents to be sent to clients that stated that there was approximately \$70,500,000 in total assets in the Valhalla Investment Partners LP, approximately \$75,200,000 in total assets in Victory Fund Ltd., and approximately \$65,300,000 in total assets in Viking Fund LLC. In truth and in fact, in or about September 2008, Valhalla Investment Partners LP, Victory Fund Ltd., and Viking Fund LLC held only a small fraction of that money on behalf of its clients.

12. ARTHUR G. NADEL, the defendant, accepted hundreds of millions of dollars of investor money, cumulatively, from individual investors, charitable organizations, trusts, and hedge funds that invested in the Funds. From at least in or about 1999 through in or about January 2009, the Funds had over 350 investors. From the outset of the scheme, and continuing throughout its operation, NADEL obtained investor funds through interstate wire transfers from financial institutions located in the Southern District of New York and elsewhere and through mailings delivered by the Postal Service.

13. In connection with this scheme, ARTHUR G. NADEL, the defendant, created and caused to be created false and fraudulent documents including, but not limited to, client account statements that reflected fictitious positive returns consistent with the returns that had been promised to investors in the Funds.

14. To execute the scheme, ARTHUR G. NADEL, the defendant, represented and caused others to represent to investors that each of the Funds was operated and managed separately. In truth and in fact, as NADEL well knew, NADEL managed, purchased and sold securities within, and treated the Funds as, a single account regardless of the Fund in which clients had invested.

15. ARTHUR G. NADEL, the defendant, received a management fee of one percent of the net asset value of each of the Funds and a performance incentive fee of 12.5 percent of all of the profits, after subtraction of fees and expenses, earned from the investments in the Funds. From at least in or about 1999 up through and including at least in or about 2008, as a result of NADEL's false representations regarding the performance of each of the Funds and the net asset value in each of the Funds, NADEL fraudulently received tens of millions of dollars in management fees and performance incentive fees that did not reflect the actual performance, or the net asset values of, the Funds.

16. In addition to receiving a management fee and a performance incentive fee, ARTHUR G. NADEL, the defendant, transferred and caused to be transferred millions of dollars of investor money in the Funds to accounts and entities owned and/or controlled by NADEL. The investors in the Funds did not authorize NADEL to make these transfers, and NADEL failed to disclose the

transfer of these funds to accounts and entities that he owned and/or controlled to investors.

Statutory Allegation

17. On or about the dates set forth below, in the Southern District of New York and elsewhere, ARTHUR G. NADEL, the defendant, unlawfully, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in transactions, acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, NADEL made false and misleading statements that induced investors to invest their money in the Funds listed below:

COUNT	APPROXIMATE DATES	FUND
ONE	From at least in or about 2003 through in or about January 2009	Victory IRA Fund Ltd.
TWO	From at least in or about 2004 through in or about January 2009	Scoop Real Estate LP

THREE	From at least in or about 2001 through in or about January 2009	Victory Fund Ltd.
FOUR	From at least in or about 1999 through in or about January 2009	Valhalla Investment Partners
FIVE	From at least in or about 2001 through in or about January 2009	Viking Fund, LLC
SIX	From at least in or about 2001 through in or about January 2009	Viking IRA Fund, LLC

(Title 15, United States Code, Sections 78j(b) and 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5;
Title 18, United States Code, Section 2.)

COUNT SEVEN
(Mail Fraud)

The Grand Jury further charges:

18. The allegations contained in paragraphs 1 through 16, above, are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

19. From in or about 2002 through in or about December 2008, in the Southern District of New York and elsewhere, ARTHUR G. NADEL, the defendant, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting to do so, did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and did deposit and cause to be deposited matters and

things to be sent and delivered by private and commercial interstate carriers, and did take and receive therefrom such matters and things, and did knowingly cause to be delivered, by mail and such carriers according to the directions thereon, and at the places at which they were directed to be delivered by the persons to whom they were addressed, such matters and things, to wit, as part of a scheme to defraud the investors in the Funds, NADEL sent and caused to be sent and delivered via the Postal Service false and fraudulent account statements from the Funds to investors, some of whom were located in New York, New York.

(Title 18, United States Code, Sections 1341 and 2.)

COUNTS EIGHT THROUGH FIFTEEN
(Wire Fraud)

The Grand Jury further charges:

20. The allegations contained in paragraphs 1 through 16, above, are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

21. On or about the dates set forth below, in the Southern District of New York and elsewhere, ARTHUR G. NADEL, the defendant, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire, radio, and television .

communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, NADEL caused money to be transferred by wire from New York, New York, to bank accounts located outside New York for the purpose of executing the scheme to defraud the investors in the Funds, as set forth below:

COUNT	APPROXIMATE DATES	DESCRIPTION OF TRANSFER
EIGHT	03/25/08	Wire transfer of approximately \$200,000 from New York, New York, to a bank account in Florida
NINE	04/02/08	Wire transfer of approximately \$100,000 from New York, New York, to a bank account in Florida
TEN	06/24/08	Wire transfer of approximately \$400,000 from New York, New York, to a bank account in Florida
ELEVEN	07/02/08	Wire transfer of approximately \$50,000 from New York, New York, to a bank account in Florida
TWELVE	08/22/08	Wire transfer of approximately \$900,000 from New York, New York, to a bank account in Florida
THIRTEEN	11/06/08	Wire transfer of approximately \$75,000 from New York, New York, to a bank account in Florida
FOURTEEN	12/02/08	Wire transfer of approximately \$350,000 from New York, New York, to a bank account in Florida
FIFTEEN	01/05/09	Wire transfer of approximately \$179,000 from New York, New York, to a bank account in Florida

(Title 18, United States Code, Sections 1343 and 2.)

FORFEITURE ALLEGATION

22. As a result of committing one or more of the foregoing securities fraud offenses, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 18, United States Code, Section 371, and Title 17, Code of Federal Regulations, Section 240.10b-5, as alleged in Counts One through Six of this Indictment, and the mail fraud offense, in violation of Title 18, United States Code, Section 1341, as alleged in Count Seven of this Indictment, and the wire fraud offenses, in violation of Title 18, United States Code, Section 1343, as alleged in Counts Eight through Fifteen of this Indictment, ARTHUR G. NADEL, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the fraud offenses, including, but not limited to, the following:

a. At least approximately \$360 million in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the charged securities fraud, mail fraud, and wire fraud offenses;

b. Any and all funds on deposit in Account No. 2840109316 held in the name of Marguerite J. Nadel Revocable Trust at Northern Trust, N.A.;

c. The real property and appurtenances known and described as 3966 Country View Drive, Sarasota, Florida;

d. The real property and appurtenances known and described as 15576 Fruitville Road, Sarasota, Florida;

e. The real property and appurtenances known and described 131 Garren Creek Road, Fairview, North Carolina;

f. The real property and appurtenances known and described as approximately acres and forty-five lots in the name of Scoop Capital, LLC, in Thomasville, Georgia;

g. The real property and appurtenances known and described as approximately thirty-seven acres in the name of Scoop Capital, LLC, in Grady County, Georgia;

h. All right, title, and interest in the entity known and described as the Venice Jet Center located in Venice, Florida;

i. All right, title, and interest in the entities known and described as Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, and Laurel Mountain Preserve Homeowners Association, Inc., including, but not limited to, 420 acres in Buncombe County and McDowell County, North Carolina;

j. All right, title, and interest in the entity known and described as Tradewind, LLC, including, but not limited to, five airplanes, one helicopter, and thirty-one airport hangars, located in Newnan-Coweta County Airport, Georgia; and

k. All right, title, and interest in the entity known and described as the Guy-Nadel Foundation, Inc.


Substitute Assets Provision

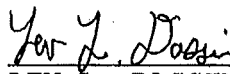
23. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 15, United States Code, Sections 78j(b) and 78ff;
Title 17, Code of Federal Regulations,
Section 240.10b-5; Title 18, United States Code,
Sections 981(a)(1)(C), 1341, and 1343;
Title 21, United States Code, Section 853(p); and
Title 28, United States Code, Section 2461.)


FOREPERSON


LEV L. DASSIN
Acting United States Attorney

Form No. USA-338-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

ARTHUR G. NADEL,

Defendant.

INDICTMENT

09 Cr. ____

(Title 15, United States Code,
Sections 78j(b) and 78ff;
Title 17, Code of Federal Regulations,
Sections 240.10b-5; and
Title 18, United States Code, Sections 2,
371, 1341, and 1343.)

LEV L. DASSIN
Acting United States Attorney.

A TRUE BILL

Arthur G. Nadel
Foreperson.

Indictment
Lett

Indictment. Case assigned to Judge
S/Ref. Judge Lett

GT Exh. 1



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

February 11, 2010

Mark B. Gombiner, Esq.
Colleen P. Cassidy, Esq.
Federal Defenders of New York
52 Duane Street, 10th floor
New York, NY 10007

Re: *United States v. Arthur Nadel*, 09 Cr. 433 (JGK)

Dear Mr. Gombiner and Ms. Cassidy:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Arthur Nadel ("the defendant") to Counts One through Fifteen of the above-referenced Indictment (the "Indictment").

Counts One through Six charge the defendant with securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2: Counts One through Six each carry a maximum sentence of twenty years' imprisonment; a maximum fine, pursuant to Title 18, United States Code, Section 3571 and Title 15, United States Code, Section 78ff of the greatest of \$5,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; a mandatory \$100 special assessment and a maximum period of supervised release of three years.

Count Seven charges the defendant with mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2, and carries a maximum sentence of twenty years' imprisonment; a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; a mandatory \$100 special assessment and a maximum period of supervised release of three years.

Counts Eight through Fifteen charge the defendant with wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2. Counts Eight through Fifteen each carry a maximum sentence of twenty years' imprisonment; a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; a mandatory \$100 special assessment and a maximum period of supervised release of three years.

Mark B. Gombiner, Esq.
Colleen P. Cassidy, Esq.
February 11, 2010
Page 2

The total maximum sentence of imprisonment is three hundred years. In addition to the foregoing, the Court must order restitution in accordance with Sections 3663, 3663A and 3664 of Title 18, United States Code.

In consideration of the defendant's plea to the above offenses, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for the conduct described in the Indictment. In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegations with respect to paragraphs 22(a)-(b), paragraphs 22(d)-(k) and paragraph 23 of the Indictment and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461, and Title 31, United States Code, Section 5317: (i) a sum of money equal to \$162,000,000 in United States currency, representing the amount of proceeds obtained as a result of the fraud offenses alleged in Counts One through Fifteen of the Indictment (the "Money Judgment"); and (ii) all right, title and interest in the following specific property:

- a. Any and all funds on deposit in Account No. 2840109316 held in the name of Marguerite J. Nadel Revocable Trust at Northern Trust, N.A.;
- b. The real property and appurtenances known and described as 15576 Fruitville Road, Sarasota, Florida;
- c. The real property and appurtenances known and described 131 Garren Creek Road, Fairview, North Carolina;
- d. The real property and appurtenances known and described as approximately acres and forty-five lots in the name of Scoop Capital, LLC, in Thomasville, Georgia;
- e. The real property and appurtenances known and described as approximately thirty-seven acres in the name of Scoop Capital, LLC, in Grady County, Georgia;
- f. All right, title, and interest in the entity known and described as the Venice Jet Center located in Venice, Florida;

Mark B. Gombiner, Esq.
Colleen P. Cassidy, Esq.
February 11, 2010
Page 3

- g. All right, title, and interest in the entities known and described as Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, and Laurel Mountain Preserve Homeowners Association, Inc., including, but not limited to, 420 acres in Buncombe County and McDowell County, North Carolina;
- h. All right, title, and interest in the entity known and described as Tradewind, LLC, including, but not limited to, five airplanes, one helicopter, and thirty-one airport hangars, located in Newnan-Coweta County Airport, Georgia; and
- i. All right, title, and interest in the entity known and described as the Guy-Nadel Foundation, Inc.

(collectively, the "Specific Property"). The defendant agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving the Specific Property and will not cause or assist anyone else in doing so. The defendant also agrees to take all necessary steps to pass clear title to the Specific Property to the United States, including, but not limited to, the execution of all necessary documentation. It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture. In consideration of the defendant's admission of the above forfeiture allegations, at the time of sentencing, the Government agrees not to seek to forfeit the real property and appurtenances known and described as 3966 Country View Drive, which is listed in paragraph 22(c) of the Indictment.

In consideration of the foregoing and pursuant to Sentencing Guidelines Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

- 1. The Guidelines provisions in effect as of November 1, 2009 apply in this case.
- 2. Pursuant to U.S.S.G. § 3D1.2(d), because the offense level is determined largely on the basis of the total amount of harm or loss, the Counts are grouped together.
- 3. The Guidelines provision applicable to the offenses charged in Counts One through Fifteen of the Indictment is U.S.S.G. § 2B1.1. Pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level is 7.

Mark B. Gombiner, Esq.
Colleen P. Cassidy, Esq.
February 11, 2010
Page 4

4. The base offense level should be increased by 26 levels because a reasonable estimate of the loss is that it is greater than \$100,000,000 but not more than \$200,000,000, U.S.S.G. § 2B1.1(b)(1)(N).
5. Pursuant to U.S.S.G. § 2B1.1(b)(2)(B), because the offense involved 50 or more victims, the offense level is further increased by 4 levels.
6. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to § 3E1.1(a), U.S.S.G. Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional 1-level reduction is warranted, pursuant to § 3E1.1(b), U.S.S.G., because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

The Government contends that the defendant's total offense level is 38, based on A(1) through A(6) above, and as calculated in the following manner:

- G1. The base offense level should be increased by 4 levels, pursuant to U.S.S.G. § 2B1.1(b)(17)(A), because the offense involved a violation of the securities law, and the defendant was an investment adviser at the time of the offense.

The defendant, by contrast, contends that his total offense level is 34, based on A(1) through A(6) above, because he contests being an investment adviser at the time of the offense.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history points. Accordingly, the defendant's Criminal History Category is I.

C. Sentencing Range

Based upon the calculations set forth above, the Government submits that the defendant's Sentencing Guidelines range is 235 to 293 months' imprisonment (the "Government's Proposed Guidelines Range"). Based upon the calculations set forth above, the defendant submits that the defendant's Sentencing Guidelines range is 151 to 188 months' imprisonment (the "Defendant's Proposed Guidelines Range"). The "Proposed Guidelines Ranges" shall refer herein to the

Mark B. Gombiner, Esq.
Colleen P. Cassidy, Esq.
February 11, 2010
Page 5

collective range of 151 to 293 months' imprisonment. In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to §5E1.2. At Guidelines level 38, the applicable fine range is \$25,000 to \$5,000,000. At Guidelines level 34, the applicable fine range is \$17,500 to \$5,000,000.

The parties agree that neither a downward nor an upward departure from the Guidelines range determined by the Court is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court *sua sponte* consider such a departure or adjustment.

The parties further agree that a sentence within the Proposed Guidelines Ranges would constitute a reasonable sentence in light of all of the factors set forth in Title 18, United States Code, Section 3553(a). However, the parties agree that either party may seek a sentence outside of the Proposed Guidelines Ranges, suggest that the Probation Department consider a sentence outside of the Proposed Guidelines Ranges, and suggest that the Court *sua sponte* consider a sentence outside of the Proposed Guidelines Ranges, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this agreement limits the right of the parties (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Proposed Guidelines Ranges (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); and (iii) to seek an appropriately adjusted sentencing range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. §3E1.1, and/or imposition of an adjustment for obstruction of justice, *see* U.S.S.G. §3C1.1, regardless of any stipulation set forth above, should the defendant move to withdraw his guilty plea once it is entered, or should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this agreement.

It is understood that pursuant to Sentencing Guidelines §6B1.4(d), neither the Probation Department nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence different from

Mark B. Gombiner, Esq.
Colleen P. Cassidy, Esq.
February 11, 2010
Page 6

the Proposed Guidelines Ranges, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Government's Proposed Guidelines Range or outside the Defendant's Proposed Guidelines Range set forth above.

It is agreed (i) that the defendant will not file a direct appeal, nor litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any sentence within or below the Proposed Guidelines Ranges of 151 to 293 months' imprisonment; and (ii) that the Government will not appeal any sentence within or above the Proposed Guidelines Ranges of 151 to 293 months' imprisonment. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

By entering this plea of guilty, the defendant also waives any and all right the defendant may have, pursuant to 18 U.S.C. §3600, to require DNA testing of any physical evidence in the possession of the Government. The defendant fully understands that, as a result of this waiver, any physical evidence in this case will not be preserved by the Government and will therefore not be available for DNA testing in the future.

The defendant understands that he is bound by his guilty plea regardless of the immigration consequences of the plea and regardless of any advice the defendant has received from his counsel or others regarding those consequences. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on those consequences, and agrees not to seek to

Mark B. Gombiner, Esq.
Colleen P. Cassidy, Esq.
February 11, 2010
Page 7

withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction or sentence, based on the immigration consequences of his guilty plea, conviction and sentence.

It is further agreed that should the conviction following defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.


Mark B. Gombiner, Esq.
Colleen P. Cassidy, Esq.
February 11, 2010
Page 8

The parties understand that this Agreement reflects the special facts of this case and is not intended as precedent for other cases.


Very truly yours,

PREET BHARARA
United States Attorney

By:


Reed M. Brodsky/Maria E. Douvas
Assistant United States Attorneys
(212) 637-2492/2327

APPROVED:

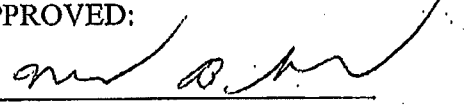

Raymond J. Lohier
Chief, Securities & Commodities Fraud Task
Force

AGREED AND CONSENTED TO:


Arthur Nadel

2/24/10
DATE

APPROVED:


Mark B. Gombiner, Esq.
Colleen P. Cassidy, Esq.
Attorneys for Arthur Nadel

2/24/10
DATE