



**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

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RELEASE OF INFORMATION
RE: GARRY CHRISTOPHER FORSYTHE, BPR #20460
CONTACT: WILLIAM C. MOODY
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

January 12, 2016

SUMNER COUNTY LAWYER SUSPENDED

On January 12, 2016, the Tennessee Supreme Court suspended Garry Christopher Forsythe from the practice of law until further orders of the Court pursuant to Tennessee Supreme Court Rule 9, Section 22.3. Mr. Forsythe was suspended based upon his guilty plea to a serious crime; i.e., wire fraud.

The Supreme Court ordered the Board to institute a formal proceeding to determine the extent of final discipline to be imposed as a result of Mr. Forsythe's guilty plea.

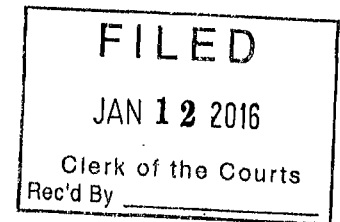
Mr. Forsythe must comply with Tennessee Supreme Court Rule 9, Section 28, regarding the obligations and responsibilities of suspended attorneys.

Forsythe 2527-6 rel.doc

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: GARRY CHRISTOPHER FORSYTHE, BPR #20460
An Attorney Licensed to Practice Law in Tennessee
(Sumner County)

No. M2016-00044-SC-BAR-BP
BOPR No. 2015-2527-6-WM(22.3)



ORDER OF ENFORCEMENT

This matter is before the Court pursuant to Tenn. Sup. Ct. R. 9, § 22.3, upon a Notice of Submission filed by Disciplinary Counsel for the Board of Professional Responsibility consisting of a certified copy of the Plea Agreement in the United States District Court for the Middle District of Tennessee, Nashville Division, in the matter of *United States of America v. Garry Christopher Forsythe* (attached as Collective Exhibit A) demonstrating that Garry Christopher Forsythe, a Tennessee attorney, has pled guilty to a serious crime, i.e., violation of 18 U.S.C. § 1343: wire fraud.

On October 26, 2009, Mr. Forsythe was temporarily suspended by this Court pursuant to Tenn. Sup. Ct. R. 9, § 4.3 (Case No. M2009-02195-SC-BPR-BP). On September 7, 2010, Mr. Forsythe was administratively suspended for failure to comply with continuing legal education requirements. On December 3, 2010, Mr. Forsythe was administratively suspended for failure to pay Professional Privilege Tax. To date, Mr. Forsythe has not requested, nor been granted reinstatement.

IT IS THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

1. Garry Christopher Forsythe is suspended from the practice of law on this date pending further orders of this Court, pursuant to Tenn. Sup. Ct. R. 9, § 22.3;
2. This matter shall be referred to the Board of Professional Responsibility for the institution of a formal proceeding in which the sole issue to be determined shall be the extent of the final discipline;
3. Further, the Order of Temporary Suspension entered on October 26, 2009, in Case No. M2009-02195-SC-BPR-BP, the administrative suspension of September 7, 2010, for failure to comply with continuing legal education requirements, and the

administrative suspension of December 3, 2010, for failure to pay Professional Privilege Tax, shall remain in effect until further orders of this Court.

4. Garry Christopher Forsythe shall fully comply with the provisions of Tenn. Sup. Ct. R. 9, § 28, concerning suspended attorneys; and

5. The Board of Professional Responsibility shall cause notice of this suspension to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

PER CURIAM

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ATTEST AND CERTIFY
A TRUE COPY

Clerk

U.S. District Court

Middle District of Tennessee

By: [Signature]
Deputy Clerk

UNITED STATES OF AMERICA)

v.)

GARRY CHRISTOPHER FORSYTHE)

Case No. 3:13-cr-00004

Judge Trauger

PETITION TO ENTER A PLEA OF GUILTY

I, Garry Christopher Forsythe, respectfully represent to the Court as follows:

(1) My true full name is Garry Christopher Forsythe and I declare that all proceedings against me be had in that name. I was born on 2-17-73 and completed ~~seventeen~~ ^{nineteen} (19) years of formal education.

(2) My retained lawyer is Mark Scruggs, Esq.

(3) I have received a copy of the indictment before being called upon to plead and have read and discussed it with my lawyer, and believe and feel that I understand every accusation made against me in the indictment.

(4) I have told my lawyer the facts and surrounding circumstances concerning the matters mentioned in the indictment and believe and feel that my lawyer knows as much about this as I do. My lawyer has counseled and advised with me as to the nature and cause of every accusation against me. We have thoroughly discussed the government's case against me and my potential defenses to the government's case. My lawyer has explained each element of the crimes charged to me and what the government would offer to prove these elements beyond a reasonable doubt.

(5) I understand that the statutory penalty for the offense with which I am charged is as follows:

Counts One-Six (Wire Fraud, 18 U.S.C. § 1343; imprisonment for not more than 20 years); Counts Seven -Nine (Bank Fraud, 18 U.S.C. § 1344; imprisonment for not more than 30 years); a \$250,000.00 fine, a three (3) year term of supervised release and a \$100.00 special assessment.

(6) I have been advised that I will be sentenced under the sentencing provisions of the Comprehensive Crime Control Act of 1984. Specifically, I will be sentenced pursuant to the statutorily established sentencing factors enumerated at 18 U.S.C. § 3553(a). I understand that the Sentencing Guidelines established by the United States Sentencing Commission are

specifically included as one of several components of the Court's sentencing considerations. I also understand that the Court must treat the United States Sentencing Guidelines as merely advisory and that the Court may or may not impose a sentence within the guideline range after taking into consideration each of the factors set forth in 18 U.S.C. § 3553(a).¹ I also understand that, if the Court fails to follow, improperly or unreasonably applies the statutory sentencing factors set forth at 18 U.S.C. § 3553(a) (specifically including the Guidelines), I have a right to a review of my sentence by the United States Court of Appeals for the Sixth Circuit within the limits of the plea agreement. I have been advised by my attorney that the guideline range in my case should be **forty-one (41) to fifty-one (51) months**. I realize that this is simply my attorney's estimate and that my final guideline range will be calculated by the United States Probation Officer who prepares the presentence report in my case, subject to challenge by either me or the government with the final guideline calculation based upon the factual and legal findings of the Court. These findings are subject to appeal within the limits of the plea agreement.

(7) I further understand that in addition to any sentence of incarceration I receive that I will be sentenced to a period of supervised release. If I am charged with more than one offense I understand that the sentencing guidelines take this into consideration and may result in a longer sentence whether or not I plead guilty to more than one offense. I have been informed that under the present federal sentencing system I will not be subject to parole and I will receive only 54 days good time per year and it will not vest until the end of each year. I further understand that I will be sentenced to a mandatory fine to be calculated through the guidelines unless the Judge finds me indigent and unable to pay any fine. Considered in this fine will be the amount of financial loss to the victim or gain to me as well as the costs of any confinement or probation supervision.

(8) I understand that should this plea of guilty be accepted, I will be a convicted felon in the eyes of the law for the rest of my life. This means, under present law that (a) I cannot vote in Tennessee; (b) I cannot possess a firearm anywhere; (c) If I am presently on probation or parole whether state or federal, the fact that I have been convicted may be used to revoke my probation or parole regardless of what sentence I receive on this case; (d) This conviction may be used as one of the necessary convictions a state would have to prove should they decide to prosecute me for being an habitual criminal. If I were convicted of being an habitual criminal I could be sentenced up to life imprisonment depending on state law; (e) I may have to disclose the fact that I am a convicted felon when applying for employment and such disclosure may result in my not getting some jobs and having difficulty in getting others. If I have been convicted of certain drug offenses, my conviction may result in my losing entitlement to certain federal benefits pursuant to the Anti-Drug Abuse Act of 1988.

(9) I understand that I can plead "NOT GUILTY" to any or all offenses charged against me, and continue to plead "NOT GUILTY", and that if I choose to plead not guilty, the Constitution guarantees me (a) the right to a speedy and public trial by jury; (b) the right not to

¹In light of the U.S. Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), the U.S. Sentencing Guidelines are effectively advisory, requiring a sentencing court to consider Guidelines ranges, *see* 18 U.S.C. § 3553(a)(4), but permitting it to tailor the sentence in light of other statutory concerns, *see* 18 U.S.C. § 3553(a).

testify and no implication of guilt would arise by my failure to do so; (c) the right to be presumed innocent until such time, if ever, that the government proves my guilt beyond a reasonable doubt to the satisfaction of a court and jury; (d) the right to see and hear all the witnesses and to cross-examine any witness who may testify against me; (e) the right to use the power and process of the court to compel the production of any evidence, including the attendance of any witnesses, in my favor; and to testify in my own behalf if I choose to do so; (f) the right to have the assistance of counsel in my defense at all stages of the proceedings; (g) if I am convicted at such trial I have the right to appeal with a lawyer to assist me and the appeal will not cost me any money if I am indigent. I understand that if the Court accepts my plea that there will be no jury trial and that I will be convicted of the count(s) to which I plead just as if a jury found me guilty of the charge(s) following a trial and that the Court may impose sentence upon me within the limits set forth in the plea agreement stated in paragraph (10) herein.

(10) No officer or agent of any branch of government (federal, state or local), nor any other person, has told me what sentence I will receive. If there are any agreements between myself and my lawyer and the prosecution concerning my plea they are fully set forth in paragraph (13) below. I understand that even with a plea agreement no person can bind the Judge to give any particular sentence in my case and that if the Judge decides to reject the plea agreement set forth in paragraph (13) below I will be offered the opportunity to withdraw my plea and plead not guilty, if I desire unless the government has only agreed to recommend a sentence to the Court (Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure). I hope to receive probation or some form of leniency but I am prepared to accept any punishment permitted by law which the Judge may see fit to impose. However, I respectfully request that the Judge consider in mitigation of punishment at the time of sentencing the fact that by voluntarily pleading "GUILTY" I have saved the government and the court the expense and inconvenience of a trial. [Federal Rules of Criminal Procedure, Rule 32(a)(1)]. I understand that if the Judge decides to make a recommendation about where I should serve any incarceration, or whether any sentence of incarceration should be concurrent with any state time I am already serving, that the recommendation is not a promise or a guarantee, but only a recommendation and is not binding on the Bureau of Prisons which will make the final decision (after I am sentenced) about where I will be incarcerated or whether my sentence will be concurrent (unless the judge does not recommend concurrent or orders it to be consecutive) with any state time.

(11) My lawyer has done all that anyone could do to counsel and assist me, and I understand the proceedings in this case against me. My lawyer has done all the investigation and research in this case that I have asked him to do and I am satisfied with his representation at this point.

(12) I fully understand my rights to plead "NOT GUILTY" and fully understand the consequence of my plea of guilty, I wish to plead "GUILTY" and respectfully request the Court to accept my plea as follows: Plea of Guilty to Counts One and Three of the Indictment. Upon acceptance of the plea agreement, Count Two shall be dismissed.

(13) This plea is a result of a plea agreement between my lawyer and the prosecution under the provisions of Rule 11 (c) (1) (B) of the Federal Rules of Criminal Procedure.

The particularized terms and conditions of the plea agreement are contained in the attached "Plea Agreement" prepared by Assistant United States Attorney William F. Abely, II.

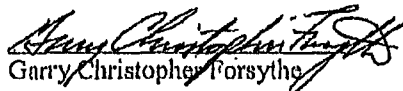
(14) I offer my plea of "GUILTY" freely and voluntarily and of my own accord; also my lawyer has explained to me, and I feel and believe I understand, the statements set forth in the indictment, and in this petition, and in the "Certificate of Counsel" which is attached to this petition.

(15) I am not under the influence of either drugs or alcohol.

(16) I pray the Court to enter now my plea of "GUILTY" as set forth in paragraph (12) of this petition, in reliance upon my statements made in this petition.


(17) Recognizing that the Court may reserve acceptance of this plea pending the receipt of the pre-sentence report, I hereby waive the provisions of Rule 32 F.R.Cr.P. to the extent that such provisions conflict with 18 USC 3552(d), and agree that the pre-sentence report may be disclosed to the U.S. Attorney, my counsel and myself, prior to the sentencing hearing.

Signed by me in open court under the penalties of perjury in the presence of my lawyer, this the ____ day of December, 2015.


Garry Christopher Forsythe

ACKNOWLEDGMENT OF GOVERNMENT ATTORNEY

The maximum punishment, plea and plea agreement are accurately stated above.


for William F. Abely, II
Assistant United States Attorney

CERTIFICATE OF COUNSEL

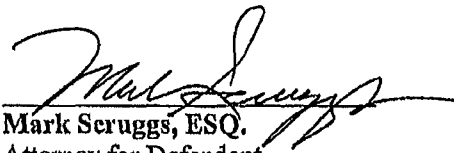
The undersigned, as attorney and counselor for Garry Christopher Forsythe, hereby certify as follows:

(1) I have read and fully explained to Garry Christopher Forsythe all the accusations against him in this case;

(2) To the best of my knowledge and belief each statement set forth in the foregoing petition is in all respects accurate and true;

(3) In my opinion the plea of "GUILTY" as offered by Garry Christopher Forsythe in paragraph (12) of the foregoing petition, is voluntarily and understandingly made; and I recommend to the Court that the plea of "GUILTY" be accepted and entered as requested in paragraph (12) of the foregoing petition.

11/12 Signed in open court in the presence of Garry Christopher Forsythe this day of December, 2015.


Mark Scruggs, ESQ.
Attorney for Defendant

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)

v.)

GARRY CHRISTOPHER FORSYTHE)

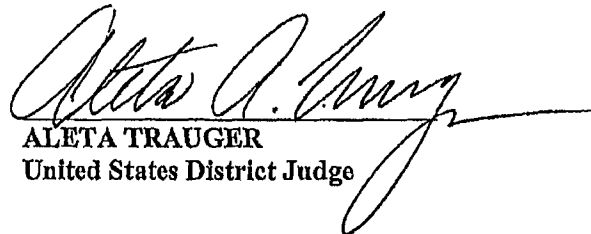
Case No. 3:13-cr-00004

Judge Trauger

ORDER

Good cause appearing therefore from the foregoing petition of the foregoing named defendant and the certificate of his counsel and for all proceedings heretofore had in this case, it is ORDERED that the petition be granted and the defendant's plea of "GUILTY" be accepted and entered as prayed in the petition and as recommended in the certificate of counsel.

Done in open court this 11th day of Dec., 2015.


Aleta Trauger
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ATTEST AND CERTIFY
A TRUE COPY

Clerk

U.S. District Court

Middle District of Tennessee

By: David Schwartz
Deputy Clerk

UNITED STATES OF AMERICA)

)

No. 3:13-cr-00004

v.)

Judge Aleta A. Trauger

)

GARRY CHRISTOPHER FORSYTHE)

PLEA AGREEMENT

The United States of America, through David Rivera, United States Attorney for the Middle District of Tennessee, and Assistant United States Attorneys William F. Abely and Cecil W. VanDevender, and defendant, Garry Christopher Forsythe, through defendant's counsel, Mark C. Scruggs, pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

Charges in This Case

1. Defendant acknowledges that he has been charged in the indictment in this case with wire fraud and bank fraud in violation of Title 18, United States Code Sections 1343 and 1344.

2. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant is Pleading Guilty

3. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count One of the indictment, charging wire fraud. In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment. After sentence has been imposed on the

count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment.

Penalties

4. The parties understand and agree that the offense to which defendant will enter a plea of guilty carries the following maximum penalties: 20 years of imprisonment, a fine of up to \$250,000, and three years of supervised release. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court. Defendant also understands that as a result of his offense, he is subject to forfeiture of property as alleged in the indictment.

Acknowledgements and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

5. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 3:13-cr-00004.

6. Defendant understands that by pleading guilty he surrenders certain trial rights, including the following:

a. If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. Defendant has a right to a jury trial, and the trial would be by a judge rather than a jury only if defendant, the government, and the Court all agreed to have no jury.

b. If the trial were a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause, or without cause by exercising so-called

peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent; that the government bears the burden of proving defendant guilty of the charges beyond a reasonable doubt; and that it must consider each count of the indictment against defendant separately.

c. If the trial were held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

e. At a trial, defendant would have a privilege against self-incrimination so that he could testify or decline to testify, and no inference of guilt could be drawn from his refusal to testify.

7. Defendant understands that by pleading guilty he is waiving all of the trial rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Factual Basis

8. Defendant will plead guilty because he is in fact guilty of the charge contained in Count One of the indictment. In pleading guilty, defendant admits the following facts and that

those facts establish his guilt beyond a reasonable doubt and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

a. Defendant was an attorney licensed to practice law in Tennessee and was a resident of Hendersonville, Tennessee.

b. Defendant owned and operated Forsythe Title and Escrow Services, Inc. ("Forsythe Title"), a real estate closing company and title insurance agent. Forsythe Title was headquartered in Hendersonville and also had offices in Nashville, Brentwood, Clarksville, and other middle Tennessee locations.

c. As a real estate closing company, Forsythe Title received money from buyers of real properties and from mortgage lenders financing the purchase of properties. Forsythe Title acted as the settlement agent, and the money provided by buyers and lenders to Forsythe Title was intended to be deposited into an escrow account and to be used only to pay the expenses of closing the particular real estate transaction. Defendant had a fiduciary duty to maintain such funds in escrow and to use them only to pay the expenses of closing the real estate transaction for which those funds had been provided.

d. At various points in time, shortages developed in several escrow accounts operated by Forsythe Title.

e. Defendant, as owner and operator of Forsythe Title, was aware of the shortages in escrow funds, and failed to disclose this shortage to buyers and lenders that provided funds to Forsythe Title.

f. As a result of the escrow shortages, funds provided by buyers and lenders to be used on a particular real estate closing were instead used by Forsythe Title to pay the expenses for unrelated real estate closings, or for other purposes.

g. Had this case gone to trial, the Government would have proven that buyers and lenders would not have provided funds to Forsythe Title to be held in escrow if they had known that there was a shortage of funds in any Forsythe Title escrow account, or if they had known that the funds provided to Forsythe Title would be used to pay the expenses for unrelated real estate closings.

h. Forsythe Title was able to continue operating despite the shortage of escrow funds while the real estate market remained strong, as Forsythe Title continued to receive additional funds from buyers and lenders that could be used to cover the shortfall. Most of the buyers and lenders that sent funds to Forsythe Title did not suffer any direct financial harm due to the shortage of escrow funds, as Forsythe Title was able to use newly-obtained escrow funds to pay the expenses associated with real estate closings as they occurred. However, when the real estate market weakened in and around 2007, the flow of new escrow funds to Forsythe Title slowed, and Forsythe Title lacked the funds to pay the closing expenses of various buyers and lenders that had already provided funds.

i. One consequence of the Forsythe Title escrow account shortages was that certain checks that had been written on a Forsythe Title escrow account to pay expenses relating to real estate transactions – including checks to finalize home purchases and to satisfy mortgages – were returned due to insufficient funds.

j. Lawyers Title Insurance Corporation ("Lawyers Title") issued the title insurance policies for which Forsythe Title operated as the agent. In January 2008, Lawyers Title sought appointment for a receiver to take over operation of Forsythe Title. Following the appointment of a receiver by the Chancery Court for Sumner County, Tennessee and an accounting of the escrow shortages, Lawyers Title paid out more than \$2,500,000 to buyers and lenders that had provided money to Forsythe Title to be used for the expenses of closing real estate transactions.

k. Had this case gone to trial, the Government would have proven that defendant had participated in the concealment of the Forsythe Title escrow shortages, that defendant had caused interstate wires to be used to facilitate the transfer of funds to and from Forsythe Title's escrow accounts, and that defendant knew that funds provided by some buyers and lenders were used by Forsythe Title to pay expenses for unrelated real estate transactions.

l. Had this case gone to trial, the Government would have proven that a credit union had transferred \$221,892.78 via interstate wire to a Forsythe Title escrow account on or about January 3, 2008.

m. The total amount of the shortages across the escrow accounts operated by Forsythe Title was at least \$2,249,294.80.

This statement of facts is provided to assist the Court in determining whether a factual basis exists for defendant's plea of guilty and criminal forfeiture. The statement of facts does not contain each and every fact known to defendant and to the United States concerning defendant's and/or others' involvement in the offense conduct and other matters.

Sentencing Guidelines Calculations

9. The parties understand that the Court will take account of the United States Sentencing Guidelines (hereinafter "U.S.S.G."), together with the other sentencing factors set forth at 18 U.S.C. § 3553(a), and will consider the U.S.S.G. advisory sentencing range in imposing defendant's sentence. The parties agree that the U.S.S.G. to be considered in this case are those effective November 1, 2015.

10. For purposes of determining the U.S.S.G. advisory sentencing range, the United States and defendant recommend to the Court, pursuant to Rule 11(c)(1)(B), the following:

a. Offense Level Calculations.

i. The base offense level for the count of conviction is 7, pursuant to U.S.S.G. § 2B1.1(a).

i. Because the amount of loss associated with this offense is more than \$1,500,000 but not more than \$3,500,000, the offense level is increased by 16 levels pursuant to U.S.S.G. § 2B1.1(b)(1).

ii. Because the defendant abused a position of trust and used a special skill in a manner that significantly facilitated the commission or concealment of the offense, the offense level is increased by 2 levels pursuant to U.S.S.G. § 3B1.3.

iii. Assuming 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 U.S.S.G. § 3E1.1(a). Furthermore, assuming defendant accepts responsibility as described in the previous sentence, the United States will move for an additional one-

level reduction pursuant to U.S.S.G § 3E1.1(b), because defendant will have given timely notice 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.

iv. The parties agree to disagree as to whether a downward departure may be appropriate pursuant to U.S.S.G. § 5H1.3 or any other provision within U.S.S.G. Chapter 5. The parties agree that whether any such departures apply will be determined by the Court at sentencing.

11. Defendant understands that the offense level as ultimately determined by the Court (the "court-determined offense level") may differ from the offense level that would result from the foregoing guideline calculations recommended by the parties. Defendant likewise understands that the guidelines range as ultimately determined by the Court (the "court-determined guidelines range") will be based on the court-determined offense level, even if it differs from the offense level that would result from the guideline calculations recommended by the parties.

12. Defendant is aware that any estimate of the offense level or guidelines range that defendant may have received from defendant's counsel, the United States, or the U.S. Probation Office is a prediction, not a promise, and is not binding on the U.S. Probation Office or the Court. Defendant understands that the Probation Office will conduct its own investigation and make its own recommendations, that the Court ultimately determines the facts and law relevant to sentencing, that the Court's determinations govern the final guidelines calculations, and that the Court determines both the final offense level and the final guidelines range. Accordingly, the validity of this agreement is not contingent upon the Probation Officer's or the Court's

concurrence with the calculations reflected above in Paragraph 10. In the event that the U.S. Probation Office or the Court contemplates any U.S.S.G. adjustments, departures, or calculations different from those recommended above, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same. Defendant further acknowledges that if the Court does not accept the U.S.S.G. recommendations of the parties, defendant will have no right to withdraw his guilty plea.

Agreements Relating to Sentencing

13. Defendant is free to recommend whatever sentence he deems appropriate.

14. The Government agrees not to recommend any sentence of imprisonment above the low end of the court-determined guidelines range. For example, if the court-determined guidelines range is 41-51 months, the Government agrees not to recommend any sentence of imprisonment above 41 months.

15. It is understood by the parties that the Court is neither a party to nor bound by this Plea Agreement and, after consideration of the U.S.S.G., may impose the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea. Similarly, defendant understands that any recommendation by the Court related to location of imprisonment is not binding on the Bureau of Prisons.

16. Regarding restitution, the parties acknowledge that, pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make restitution and that the Court will determine the appropriate amount of restitution. Unless the Court orders otherwise, restitution shall be due immediately.

17. Defendant agrees to pay the special assessment of \$100 at or before the time of sentencing to the Clerk of the U.S. District Court.

Forfeiture in the Form of a Money Judgment

18. The indictment alleges that defendant is liable to the United States to forfeiture of funds that constitute proceeds of the violation alleged in Count One of the indictment. By entry of a guilty plea to Count One of the indictment, Defendant acknowledges that these funds are subject to forfeiture.

19. Defendant agrees that, as a result of his acts and omissions, the proceeds of his crimes of conviction which are subject to forfeiture have been transferred to third parties, and that the United States is entitled to forfeiture of substitute property in the form of a money judgment.

20. Defendant agrees to the entry of an order of forfeiture consisting of a money judgment in the amount of \$2,249,294.80.

21. Defendant and the United States agree that any payment voluntary made toward the restitution will reduce the money judgment accordingly, and Defendant will cooperate and assist the United States in its efforts to recover the proceeds of the crime.

22. Defendant understands that forfeiture of this property shall not be treated as satisfaction of any fine, cost of imprisonment, or any other penalty the Court may impose upon defendant in addition to the forfeiture judgment. However, the parties understand that any assets located through the forfeiture process will be applied through restitution to the victim in the manner accorded by Title 18, United States Code, Section 3664 and the forfeiture will be reduced accordingly.

23. Defendant further authorizes the U.S. Probation Office to release the Presentence Investigative Report and all financial documents pertaining to Defendant to the Asset Forfeiture Unit of the United States Attorney's Office for the Middle District of Tennessee.

Presentence Investigation Report/Post-Sentence Supervision

24. Defendant understands that the United States Attorney's Office, in its submission to the U.S. Probation Office as part of the Pre-Sentence Report and at sentencing, shall fully apprise the District Court and the U.S. Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, as well as any related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

25. Defendant agrees to execute truthfully and completely a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the U.S. Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the Probation Officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1 and enhancement of his sentence for obstruction of justice under U.S.S.G. § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

26. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Plea Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Plea

Agreement are limited to the United States Attorney's Office for the Middle District of Tennessee and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Plea Agreement.

27. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service ("IRS") in its collection of any taxes, interest, or penalties from defendant or defendant's partnership or corporations.

Entry of Guilty Plea

28. The parties jointly request that the Court accept the defendant's plea of guilty as set forth in this agreement and enter an order reflecting the acceptance of the plea while reserving acceptance of this plea agreement until receipt of the pre-sentence report and sentencing.

Waiver of Appellate Rights

29. Regarding the issue of guilt, defendant hereby waives all (i) rights to appeal any issue bearing on the determination of whether he is guilty of the crime to which he is agreeing to plead guilty; and (ii) trial rights that might have been available if he exercised his right to go to trial. Regarding sentencing, Defendant is aware that 18 U.S.C. § 3742 generally affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal any sentence within or below the guideline range associated with the court-determined offense level when combined with defendant's criminal history category as determined by the Court. Defendant further waives all appellate rights and all collateral attacks concerning forfeiture and all matters related thereto. Defendant also knowingly waives the right to challenge the sentence imposed in any collateral attack, including, but not limited to, a motion brought pursuant

to 28 U.S.C. § 2255 and/or § 2241, and/or 18 U.S.C. § 3582(c). However, no waiver of the right to appeal, or to challenge the adjudication of guilt or the sentence imposed in any collateral attack, shall apply to a claim of involuntariness, prosecutorial misconduct, or ineffective assistance of counsel. Likewise, the government waives the right to appeal any sentence within or above the guideline range associated with the court-determined offense level when combined with defendant's criminal history category as determined by the Court.

Other Terms

30. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

31. Defendant agrees to cooperate with the IRS in any tax examination or audit of defendant and his wife and defendant's partnerships or corporations that directly or indirectly relates to or arises out of the course of conduct defendant has acknowledged in this Plea Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and records that the IRS may request. Nothing in this paragraph precludes defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

32. Should defendant engage in additional criminal activity after he has pled guilty but prior to sentencing, defendant shall be considered to have breached this Plea Agreement, and the government at its option may void this Plea Agreement.

Conclusion

33. Defendant understands that the indictment and this Plea Agreement have been or will be filed with the Court, will become matters of public record, and may be disclosed to any person.

34. Defendant understands that his compliance with each part of this Plea Agreement extends until such time as he is sentenced, and failure to abide by any term of the Plea Agreement is a violation of the Plea Agreement. Defendant further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Plea Agreement, or may require defendant's specific performance of this Plea Agreement.

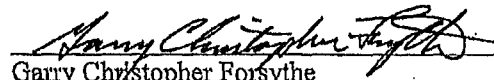
35. Defendant and his attorney acknowledge that no threats have been made to cause defendant to plead guilty.

36. No promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement, and none will be entered into unless memorialized in writing and signed by all of the parties listed below.

37. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending indictment. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines that may apply in my case. 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.

Date:

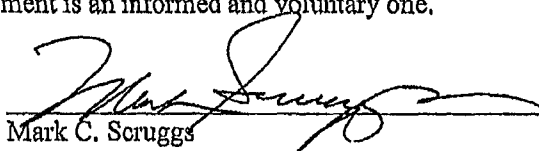
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Garry Christopher Forsythe
Defendant

38. Defense Counsel Signature: I am counsel for defendant in this case. I have fully explained to defendant his rights with respect to the pending indictment. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements, and I have fully explained to defendant the provisions of those guidelines that may apply in this case. I have reviewed carefully every part of this Plea Agreement with defendant. To my knowledge, defendant's decision to enter into this Plea Agreement is an informed and voluntary one.


Date:

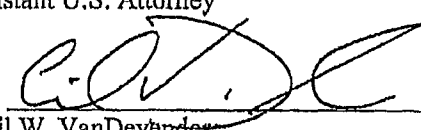
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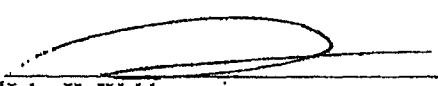

Mark C. Scruggs
Attorney for Defendant

Respectfully submitted,

DAVID RIVERA
United States Attorney

By: 
William F. Abely
Assistant U.S. Attorney

By: 
Cecil W. VanDevender
Assistant U.S. Attorney


John K. Webb
Deputy Criminal Chief

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ATTEST AND CERTIFY
A TRUE COPY
Clerk
U.S. District Court
Middle District of Tennessee
By: *Joe Schwarz*
Deputy Clerk

UNITED STATES OF AMERICA }
 }
V. }
 }
GARRY CHRISTOPHER FORSYTHE }

Docket No. 3:13-00004
JUDGE TRAUGER

AGREED ORDER AMENDING PLEA PETITION

By agreement of the parties, as evidenced by the signatures of Counsel and the Defendant below, and in light of a typographical error, it is hereby **ORDERED** that the "Petition to Enter a Plea of Guilty" submitted herein in open Court on December 11, 2015 is hereby **AMENDED** such that Paragraph (12) of said petition should be deleted and in lieu thereof the following should be inserted:


(12) I fully understand my rights to plead "NOT GUILTY" and fully understand the consequence of my plea of guilty, I wish to plead "GUILTY" and respectfully request the Court to accept my plea as follows: Plea of Guilty to Count One of the Indictment. Upon acceptance of the plea agreement, Counts Two thru Nine shall be dismissed.

Entered this the 16th day of December, 2015.

Aleta Trauger
Aleta Trauger, Judge

Approved for Entry:

/s/ Mark Scruggs
Mark Scruggs, 10103
Attorney for Defendant
95 White Bridge Rd., Ste.508
Nashville, TN 37205
(615) 352-8326


Gary Christopher Foy, the
Defendant

/s/ William F. Abely, II
William F. Abely, II, 31635
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(615) 736-5151