

APR 24 2017

BOARD OF PROFESSIONAL RESPONSIBILITY

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

RICHARD KENT HARRIS, Defendant.

§ § § § § § §

CRIMINAL NO. 4:17-cr-70-1

PLEA AGREEMENT

The United States of America, by and through Kenneth Magidson, United States Attorney for the Southern District of Texas, and Christopher T. Tortorice, Special Assistant United States Attorney, and the defendant Richard Kent Harris, and the defendant's counsel, pursuant to Rule 11(c)(1)(A) and (C) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

Defendant's Agreement

1. Defendant agrees to plead guilty to Count One of the Information. Count One charges Defendant with Conspiracy to Commit Bankruptcy Fraud, in violation of Title 18, United States Code, Section 371 and 157. Defendant, by entering this plea, agrees that he/she is waiving any right to have the facts that the law makes essential to the punishment either charged in the information, or proved to a jury or proven beyond a reasonable doubt.

Punishment Range

2. The statutory maximum penalty for each violation of Title 18, United States Code, Sections 371 and 157, is imprisonment of not more than five (5) years, and a fine of not more than \$250,000. Additionally, Defendant may receive a term of supervised release after imprisonment of up to 3 years. Defendant acknowledges and understands that if he/she should violate the conditions of any period of supervised release which may be imposed as part of his/her sentence,

Exhibit A

TRUE COPY I CERTIFY ATTEST APR 21 2017

DAVID J. BRADLEY, Clerk of Court

then Defendant may be imprisoned for the entire term of supervised release, without credit for time already served on the term of supervised release prior to such violation. *See* Title 18, United States Code, sections 3559(a) and 3583(e)(3). Defendant understands that he/she cannot have the imposition or execution of the sentence suspended, nor is he/she eligible for parole.

#### **Mandatory Special Assessment**

3. Pursuant to Title 18, United States Code, section 3013(a)(2)(A), immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction. The payment will be by cashier's check or money order, payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

#### **Immigration Consequences**

4. Defendant recognizes that pleading guilty may have consequences with respect to his/her immigration status if he/she is not a citizen of the United States. Defendant understands that if he/she is not a citizen of the United States, by pleading guilty he/she may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty.

#### **Waiver of Appeal and Collateral Review**

5. Defendant is aware that Title 28, United States Code, section 1291, and Title 18, United States Code, section 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, section 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or

"collaterally attack" the conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28, United States Code, section 2255. In the event Defendant files, a notice of appeal following the imposition of the sentence or later collaterally attacks his conviction or sentence, the United States will assert its rights under this agreement and seek specific performance of these waivers.

6. Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement.

#### **The United States' Agreements**

7. The United States agrees to each of the following:

(a) If Defendant pleads guilty to Count One of the information and persists in that plea through sentencing, and if the Court accepts this plea agreement, the United States will move to dismiss any remaining counts of the information at the time of sentencing;

(b) If the Court determines that Defendant qualifies for an adjustment under section 3E1.1(a) of the United States Sentencing Guidelines, and the offense level prior to operation of section 3E1.1(a) is 16 or greater, the United States will move under section 3E1.1(b) for an additional one-level reduction because Defendant timely notified authorities of his or her intent to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources more efficiently.

(c) Pursuant to Rule 11(c)(1)(C), Federal Rules Criminal Procedure, the United States agrees to a sentence of imprisonment of 10 months, 5 months of which shall be served under the terms of home confinement [see: USSG § 5C1.1(d)(2)]; a term of supervised release of 3 years; a fine of \$0, and a Special Assessment of \$100.

#### **Agreement Binding - Southern District of Texas Only**

8. The United States agrees that it will not further criminally prosecute Defendant in the Southern District of Texas for offenses arising from conduct charged in the information. This

plea agreement binds only the United States Attorney's Office for the Southern District of Texas and Defendant. It does not bind any other United States Attorney. The United States will bring this plea agreement and the full extent of Defendant's cooperation to the attention of other prosecuting offices, if requested.

#### **United States' Non-Waiver of Appeal**

9. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;
- (d) to file a pleading relating to these issues, in accordance with section 6A1.2 of the United States Sentencing Guidelines and Title 18, United States Code, section 3553(a); and
- (e) to appeal the sentence imposed or the manner in which it was determined.

#### **Sentence Determination**

10. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the provisions of Title 18, United States Code, section 3553(a). Defendant is aware that a sentence has not yet been determined by the Court. The parties understand that the Court may decline to accept this agreement. If the Court does not accept the agreement, the defendant will be given the opportunity to withdraw from the plea.

#### **Rights at Trial**

11. Defendant understands that by entering into this agreement, he/she surrenders certain rights as provided in this plea agreement. Defendant understands that the rights of a defendant include the following:

(a) If Defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.

(b) At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses and his/her attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on his/her own behalf. If the witnesses for Defendant would not appear voluntarily, he/she could require their attendance through the subpoena power of the court; and

(c) At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if Defendant desired to do so, he/she could testify on his/her own behalf.

#### Factual Basis for Guilty Plea

12. Defendant is pleading guilty because he/she is in fact guilty of the charges contained in Count One of the information. If this case were to proceed to trial, the United States could

prove each element of the offense beyond a reasonable doubt. The following facts, among others would be offered to establish Defendant's guilt:

Defendant, Richard Harris was married to Darlene Riley in approximately 2004. Harris entered into a contract on June 22, 2012 with Jaeger Homes to build a custom home. The contract with Jaeger Homes was executed by Harris solely, but was community debt since it was executed during the course of their marriage. In August 2012, Harris and Riley became embroiled in a dispute with Jaeger Homes over the design of their house. A breach of contract was ruled upon by an arbitrator on January 11, 2013, awarding damages for Jaeger Homes against Harris for \$54,686.55. Roughly two weeks later Harris and Riley consulted with a bankruptcy attorney.

Harris and Riley lived together as husband and wife until Riley filed for divorce on April 1, 2013. In the months leading up to the divorce filing Harris and Riley made substantial charges on the American Express card used for their mutual benefit. On February 26, 2013, Riley withdrew \$67,000 from her joint checking account she shared with Harris and deposited it into her own sole checking account.

Following Riley's filing for divorce, a property settlement was entered into between Riley and Harris. All material assets of the marriage were awarded to Riley, which included a 2004 Jaguar XK8, a 2007 beachcomber boat, a utility trailer, all of their furnishings, 43 paintings, jewelry, 2012 federal income tax refund, and half of his net federal pension. On June 12, 2013, Harris also transferred his interest in their homestead by special warranty deed to Riley. On June 3, 2013, the divorce was finalized.

On October 15, 2013, Harris filed for Chapter 7 bankruptcy in the Southern District of Texas. Harris claimed debts totaling \$173,305.19 to American Express, Chase Amazon, Chase

Freedom, Discover Card, Jaeger Homes and other unsecured debtors. Harris failed to disclose on his bankruptcy petition the transfer of his homestead interest to Riley, the vehicle transfers, the sale of a truck for \$5,500, and the \$67,000 withdrawal from his joint account with Riley. A check of Riley's bank records found that the \$67,000 was spent on mortgage payments and other household expenses.

Harris and Riley devised a scheme to defraud Jaeger Homes and other creditors of Harris'. Riley's transfer of the \$67,000 from the joint account with Harris was done to hide those assets from being used to repay Harris's creditors in the Chapter 7 bankruptcy. All of these acts took place in the Southern District of Texas.

#### **Breach of Plea Agreement**

13. If Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and Defendant's plea and sentence will stand. If at any time Defendant retains, conceals, or disposes of assets in violation of this plea agreement, or if Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, will be used against defendant in any prosecution.

#### **Restitution and Fines – Generally**

14. This Plea Agreement is being entered into by the United States on the basis of Defendant's express representation that he/she will make a full and complete disclosure of all assets over which he/she exercises direct or indirect control, or in which he/she has any financial

interest. Defendant agrees not to dispose of any assets or take any action that would effect a transfer of property in which he/she has an interest, unless Defendant obtains the prior written permission of the United States.

15. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500 or similar form) within 14 days of signing this plea agreement. Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms permitting the United States to obtain tax information, bank account records, credit histories, and social security information. Defendant agrees to discuss and answer any questions by the United States relating to Defendant's complete financial disclosure.

16. Defendant agrees to take all steps necessary to pass clear title to the United States and to assist fully in the collection of restitution, if ordered by the court.

#### Restitution

17. Defendant agrees to pay full restitution to the victim(s) regardless of the count(s) of conviction. Defendant understands and agrees that the Court will determine the amount of restitution to fully compensate the victim(s). Defendant agrees that restitution imposed by the Court will be due and payable immediately, contingent on his ability to pay, and that Defendant will not attempt to avoid or delay payment. Subject to the provisions of paragraph 7 above, Defendant waives the right to challenge in any manner, including by direct appeal or in a collateral proceeding, the restitution order imposed by the Court.

#### Fines

18. Defendant understands that pursuant to paragraph 7(c), no fine will be assessed.



**Complete Agreement**

19. This written plea agreement, consisting of 12 pages, including the attached addendum of Defendant and his/her attorney, constitutes the complete plea agreement between the United States, Defendant, and Defendant's counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against him/her and that he/she is pleading guilty freely and voluntarily because he/she is guilty.

20. Any modification of this plea agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on March 8, 2017.

  
Richard K. Harris  
Defendant

Subscribed and sworn to before me on March 8, 2017.

DAVID J. BRADLEY, Clerk  
UNITED STATES DISTRICT CLERK

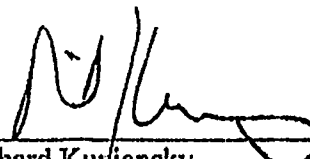
By:   
Deputy United States District Clerk

APPROVED:

Kenneth Magidson  
United States Attorney

By:

  
Christopher T. Tortorice  
Special Assistant United States Attorney

  
Richard Kujjansky  
Attorney for Defendant

CA RB/K

~~RB~~

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

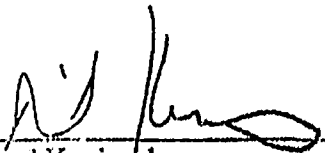
RICHARD KENT HARRIS,  
Defendant.

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CRIMINAL NO.

PLEA AGREEMENT – ADDENDUM

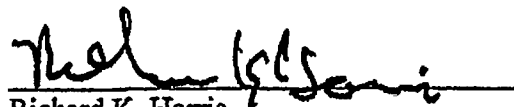
I have fully explained to Defendant his/her rights with respect to the pending information. I have reviewed the provisions of the United States Sentencing Commission’s Guidelines Manual and Policy Statements and I have fully and carefully explained to Defendant the provisions of those Guidelines which may apply in this case. I have also explained to Defendant that the Sentencing Guidelines are only advisory. Further, I have carefully reviewed every part of this plea agreement with Defendant. To my knowledge, Defendant’s decision to enter into this agreement is an informed and voluntary one.

  
\_\_\_\_\_  
Richard Kuniarsky  
Attorney for Defendant

3-8-17  
\_\_\_\_\_  
Date

I have consulted with my attorney and fully understand all my rights with respect to the information pending against me. My attorney has fully explained, and I understand, all my rights with respect to the provisions of the United States Sentencing Commission’s Guidelines Manual

which may apply in my case. I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.

  
Richard K. Harris  
Defendant

9-8-17  
Date