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AT SEATTLE  
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WESTERN DISTRICT OF WASHINGTON  
DEPUTY



07-CR-00366-M

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH C. LAVIN,

Defendant.

NO. CR07-366 RAJ

PLEA AGREEMENT

The United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Kathryn Kim Frierson, Assistant United States Attorney for said District, and the defendant, JOSEPH C. LAVIN, and his attorney, Michael Martin, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. Waiver of Indictment. Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter pleas of guilty to the charges brought by the United States Attorney in an Information.

2. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter pleas of guilty to Wire Fraud, as charged in Count One of the Information, in violation of Title 18, United States Code, Section 1343 and Money Laundering, as charged in Count Two of the Information, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i). By entering these

1 | pleas of guilty, Defendant hereby waives all objections to the form of the charging  
2 | document.

3 | Defendant further understands that before entering his pleas of guilty,  
4 | Defendant will be placed under oath. Any statement given by Defendant under oath may  
5 | be used by the government in a prosecution for perjury or false statement.

6 | 3. Elements of the Offense. The elements of the offense of Wire Fraud, as  
7 | charged in Count One, in violation of Title 18, United States Code, Section 1343, are as  
8 | follows:

9 | First, the defendant made up a scheme or artifice to defraud and to obtain  
10 | money or property by means of false statements or promises;

11 | Second, the defendant knew that the statements or promises were false;

12 | Third, the statements or promises were material, that is they would  
13 | reasonably influence another to part with money or property;

14 | Fourth, the defendant acted with the intent to defraud; and

15 | Fifth, the defendant used, or caused to be used, wire communications in  
16 | interstate or foreign commerce.

17 | The elements of Money Laundering, as charged in Count Two, in violation  
18 | of Title 18, United States Code, Section 1956(a) (1)(A)(i), are as follows:

19 | First, the defendant conducted a financial transaction involving property  
20 | that represented the proceeds of the Wire Fraud as charged in Count 1;

21 | Second, the defendant knew that the property represented the proceeds of  
22 | the Wire Fraud as charged in Count 1; and

23 | Third, the defendant acted with the intent to promote the carrying on of the  
24 | Wire Fraud as charged in Count 1.

25 | 4. The Penalties. Defendant understands that the statutory penalties for the  
26 | offense of Wire Fraud, as charged in Count One, are imprisonment for up to twenty (20)  
27 | years, a fine of up to two hundred and fifty thousand dollars (\$250,000.00), a period of  
28 | supervision following release from prison of up to five (5) years, and a one hundred dollar

1 (\$100.00) penalty assessment. The statutory penalties for the offense of Money  
2 Laundering, as charged in Count Two, are imprisonment for up to twenty (20) years, a  
3 fine of up to \$500,000, a period of supervision following release from prison of up to five  
4 (5) years, and a one hundred dollar (\$100.00) penalty assessment.

5 Defendant agrees that any monetary penalty the Court imposes, including  
6 the special assessment, fine, costs or restitution, is due and payable immediately, and  
7 further agrees to submit a completed Financial Statement of Debtor form as requested by  
8 the United States Attorney's Office.

9 Defendant understands that supervised release is a period of time following  
10 imprisonment during which he will be subject to certain restrictions and requirements.  
11 Defendant further understands that if supervised release is imposed and he violates one or  
12 more of its conditions, he could be returned to prison for all or part of the term of  
13 supervised release that was originally imposed. This could result in Defendant serving a  
14 total term of imprisonment greater than the statutory maximum stated above.

15 5. Rights Waived by Pleading Guilty. Defendant understands that, by  
16 pleading guilty, he knowingly and voluntarily waives the following rights:

- 17 a. The right to plead not guilty, and to persist in a plea of not guilty;  
18 b. The right to a speedy and public trial before a jury of Defendant's  
19 peers;  
20 c. The right to the effective assistance of counsel at trial, including, if  
21 Defendant could not afford an attorney, the right to have the Court appoint one for  
22 Defendant;  
23 d. The right to be presumed innocent until guilt has been established at  
24 trial, beyond a reasonable doubt;  
25 e. The right to confront and cross-examine witnesses against Defendant  
26 at trial;  
27 f. The right to compel or subpoena witnesses to appear on Defendant's  
28 behalf at trial;

1 g. The right to testify or to remain silent at trial, at which trial such  
2 silence could not be used against Defendant;

3 h. The right to appeal a finding of guilt or any pretrial rulings;

4 i. The right, to the extent required by law, to have sentencing factors  
5 charged in the Information or determined by a jury beyond a reasonable doubt.

6 6. United States Sentencing Guidelines. Defendant understands and  
7 acknowledges that, at sentencing, the Court must consider the sentencing range calculated  
8 under the United States Sentencing Guidelines, together with the other factors set forth in  
9 Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances  
10 of the offense(s); (2) the history and characteristics of the defendant; (3) the need for the  
11 sentence to reflect the seriousness of the offense, to promote respect for the law, and to  
12 provide just punishment for the offense; (4) the need for the sentence to afford adequate  
13 deterrence to criminal conduct; (5) the need for the sentence to protect the public from  
14 further crimes of the defendant; (6) the need to provide the defendant with educational  
15 and vocational training, medical care, or other correctional treatment in the most effective  
16 manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims;  
17 and (9) the need to avoid unwarranted sentence disparity among defendants involved in  
18 similar conduct who have similar records. Accordingly, Defendant understands and  
19 acknowledges that:

20 a. The Court will determine Defendant's applicable Sentencing  
21 Guidelines range at the time of sentencing;

22 b. After consideration of the Sentencing Guidelines and the other  
23 factors in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to  
24 the maximum term authorized by law;

25 c. The Court is not bound by any recommendation regarding the  
26 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
27 range offered by the parties, or by the United States Probation Department; and  
28

1 d. Defendant may not withdraw a guilty plea solely because of the  
2 sentence imposed by the Court.

3 7. Ultimate Sentence. Defendant acknowledges that no one has promised or  
4 guaranteed what sentence the Court will impose.

5 8. Restitution. Defendant shall make restitution in an amount to be  
6 determined at sentencing, with credit for any amounts already paid. Said amount shall be  
7 due and payable immediately and shall be paid in accordance with a schedule of payments  
8 as proposed by the United States Probation Office and ordered by the Court.

9 9. Statement of Facts. The parties agree on the following facts in support of  
10 Defendant's guilty pleas and sentencing. Defendant admits he is guilty of the charged  
11 offenses and expressly waives any right to have these facts determined by a jury beyond a  
12 reasonable doubt.

13 In 2003 and continuing through 2005, JOSEPH C. LAVIN solicited  
14 investors for a series of investment funds known as the Global Asset Management Short  
15 Term Fund, Medium Fund, and Long Term Fund (collectively, "the Funds"). LAVIN  
16 represented to potential investors that the Funds' assets were allocated among foreign  
17 currency investments and other "Asset-Backed Investments." LAVIN also represented  
18 to potential investors that the Funds would target monthly returns of between 1.5% and  
19 2.5%, depending upon which Fund the investor selected. LAVIN stated that as  
20 manager of the Funds, he would receive compensation only if the Funds' earnings  
21 exceeded the targeted returns. LAVIN represented to potential investors that he was an  
22 experienced financial executive who was responsible for having consistently earned for  
23 many years returns in excess of 2% per month in the Funds.

24 Certain of the statements LAVIN made to recruit investors were  
25 knowingly false. LAVIN was not an experienced financial executive and had not  
26 consistently earned 2% per month for many years for the Funds. LAVIN initially  
27 believed that he would be able to earn the returns needed to fulfill his commitments to  
28 the clients and his intention was not to use any of the investor funds personally until the

1 investors had reached their targeted returns. After a period of time, however, it  
2 became clear that LAVIN could not produce the expected and targeted returns. LAVIN  
3 did not disclose to his clients that the expected returns were unobtainable and, instead,  
4 continued the pretense that the investments were earning in excess of 2%. LAVIN,  
5 contrary to his promises, also used certain portion of investor funds for his personal  
6 use.

7 With respect to the investor money, LAVIN promised that it would be  
8 placed in foreign currency investments or asset <sup>backed</sup> based investments. While LAVIN did  
9 place some of the investor money into one or more of these three investment vehicles, a  
10 great deal of investment money was placed in other investment vehicles which had  
11 never been approved by the investors or were paid to LAVIN through his company.

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12 Between 2003 and 2005, as a result of his scheme and artifice to defraud,  
13 LAVIN obtained approximately \$13 million from more than 200 investors for  
14 investment in the GAP Funds. These investors relied upon the knowingly false  
15 representations and promises made by LAVIN in placing their money with GAP.

16 For example, on January 21, 2003, an investor, R.L., at LAVIN's  
17 direction, transferred by wire \$250,000.00 from his IRA account at Charles Schwab &  
18 Co. in the State of California to a U.S. Bank account in the name of Global Currency  
19 Trading Account in Seattle, Washington, an account that was controlled by LAVIN.  
20 R.L. wired the money to be placed invested in one of the GAP Funds in reliance upon  
21 LAVIN's representations and promises as described above. Despite receiving regular  
22 statements from LAVIN that R.L.'s investment was making 3% monthly returns, R.L.  
23 did not receive the promised returns nor did he receive back his principal.

24 Once LAVIN obtained investor funds, he engaged in monetary  
25 transactions with the intent to promote the carrying on of his scheme and artifice to  
26 defraud. For example, on August 20, 2003, LAVIN caused to be withdrawn by check  
27 \$2,744.94 from U.S. Bank account number \*\*\*\*\*8931 in the name of Global  
28 Currency Trading Group, LLC, made payable to E.A. The payment was a referral fee

1 to E.A. for introducing investors to the Funds. LAVIN knew that the payment was  
2 made with funds he fraudulently obtained from other investors as a result of his scheme  
3 and artifice to defraud. The payment was made with the intent to encourage E.A, and  
4 others to continue bringing other investors to the Funds.

5 10. Sentencing Factors. As part of this Plea Agreement, the United States  
6 Attorney's Office for the Western District of Washington agrees that the amount of  
7 attempted loss for purposes of sentencing will not exceed \$13 million and that the number  
8 of victims involved in this case will be less than 250. The United States Attorneys Office  
9 for the Western District of Washington also agrees that Defendant is free to argue for a  
10 lesser loss figure and/or number of victims.

11 11. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,  
12 the United States Attorney's Office for the Western District of Washington agrees not to  
13 prosecute Defendant for any additional offenses known to it as of the time of this  
14 Agreement that are based upon evidence in its possession at this time, or that arise out of  
15 the conduct giving rise to this investigation. In this regard, Defendant recognizes that the  
16 United States has agreed not to prosecute all of the criminal charges that the evidence  
17 establishes were committed by Defendant solely because of the promises made by  
18 Defendant in this Agreement. Defendant acknowledges and agrees, however, that for  
19 purposes of preparing the Presentence Report, the United States Attorney's Office will  
20 provide the United States Probation Office with evidence of all relevant conduct  
21 committed by Defendant.

22 12. Acceptance of Responsibility. The United States acknowledges that  
23 Defendant has assisted the United States by timely notifying the authorities of his  
24 intention to plead guilty, thereby permitting the United States to avoid preparing for trial  
25 and permitting the Court to allocate its resources efficiently. If at the time of sentencing,  
26 the United States remains satisfied that Defendant has accepted responsibility, then it will  
27 recommend a sentence that takes this acceptance of responsibility into consideration.  
28

1 Defendant understands and agrees that the United States will base its recommendation on  
2 factors set forth in the United States Sentencing Guidelines, including Section 3E1.1.

3 13. Cooperation.

4 a. Defendant shall cooperate completely and truthfully with law  
5 enforcement authorities in the investigation and prosecution of other individuals involved  
6 in criminal activity. Such cooperation shall include, but not be limited to, complete and  
7 truthful statements to law enforcement officers, as well as complete and truthful  
8 testimony, if called as a witness before a grand jury, or at any state or federal trial, retrial,  
9 or other judicial proceedings. Defendant acknowledges that this obligation to cooperate  
10 shall continue after Defendant has entered a guilty plea and sentence has been imposed,  
11 no matter what sentence Defendant receives. Failure to do so may constitute a breach of  
12 this Plea Agreement.

13 b. Defendant understands the United States will tolerate no deception  
14 from him. If, in the estimation of the United States Attorney, information or testimony  
15 provided from the date of the Plea Agreement, proves to be untruthful or incomplete in  
16 any way, regardless of whether the untruthfulness was intended to help or hurt the United  
17 States' case, the United States Attorney for the Western District of Washington may  
18 consider that Defendant has breached this Plea Agreement.

19 c. The United States Attorney's Office for the Western District of  
20 Washington, in turn, agrees not to prosecute Defendant for any other offenses, other than  
21 crimes of violence, that Defendant may have committed in the Western District of  
22 Washington prior to the date of this Agreement about which: (1) the United States  
23 presently possesses information; or (2) Defendant provides information pursuant to this  
24 Agreement to cooperate with the authorities.

25 d. The parties agree that information provided by Defendant in  
26 connection with this Plea Agreement shall not be used to determine his sentence, except  
27 to the extent described in USSG § 1B1.8.  
28

1 e. In exchange for his cooperation, as described above, and conditioned  
2 upon his fulfillment of all conditions of this Plea Agreement, the United States Attorney  
3 agrees to consider filing a motion pursuant to 18 U.S.C. § 3553(e) and/or Section 5K1.1  
4 of the United States Sentencing Guidelines, recommending that the Court sentence  
5 Defendant to a sentence that reflects his cooperation. Defendant understands that in the  
6 event the United States Attorney files such a sentencing recommendation, that  
7 recommendation will be based on consideration of factors and provisions set forth in the  
8 United States Sentencing Guidelines.

9 14. Waiver of Appeal As part of this Plea Agreement and on the condition that  
10 the Court imposes a custodial sentence that is within or below the Sentencing Guidelines  
11 range (or the statutory mandatory minimum, if greater than the Guidelines range) that is  
12 determined by the Court at the time of sentencing, Defendant waives to the full extent of  
13 the law:

- 14 a. any right conferred by Title 18, United States Code, Section 3742 to  
15 appeal the sentence, including any restitution order imposed; and
- 16 b. any right to bring a collateral attack against the conviction and  
17 sentence, including any restitution order imposed, except as it may  
18 relate to the effectiveness of legal representation

19 Furthermore, this waiver does not preclude Defendant from bringing an appropriate  
20 motion pursuant to 28 U.S.C. 2241, to address the conditions of his confinement or the  
21 decisions of the Bureau of Prisons regarding the execution of his sentence.

22 If Defendant breaches this Plea Agreement at any time by appealing or  
23 collaterally attacking (except as to effectiveness of legal representation) the conviction or  
24 sentence in any way, the United States may prosecute Defendant for any counts, including  
25 those with mandatory minimum sentences, that were dismissed or not charged pursuant to  
26 this Plea Agreement.

27 15. Voluntariness of Plea. Defendant acknowledges that he has entered into  
28 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the

1 promises contained in this Plea Agreement, were made to induce Defendant to enter this  
2 plea of guilty.

3 16. Statute of Limitations. In the event that this Agreement is not accepted by  
4 the Court for any reason, or Defendant has breached any of the terms of this Plea  
5 Agreement, the statute of limitations shall be deemed to have been tolled from the date of  
6 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea  
7 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea  
8 Agreement by Defendant is discovered by the United States Attorney's Office.

9 17. Post-Plea Conduct. Defendant understands that the terms of this Plea  
10 Agreement apply only to conduct that occurred prior to the execution of this Agreement.  
11 If, after the date of this Agreement, Defendant should engage in illegal conduct, or  
12 conduct that is in violation of his/her conditions of release (examples of which include,  
13 but are not limited to: obstruction of justice, failure to appear for a court proceeding,  
14 criminal conduct while pending sentencing, and false statements to law enforcement  
15 agents, the Pretrial Services Officer, Probation Officer or Court), the United States is free  
16 under this Agreement to seek a sentence that takes such conduct into consideration. Such  
17 a sentence could include, to the extent the United States Sentencing Guidelines are  
18 applicable, a sentencing enhancement or upward departure.

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1 18. Completeness of Agreement. The United States and Defendant  
2 acknowledge that these terms constitute the entire Plea Agreement between the parties.  
3 This Agreement only binds the United States Attorney's Office for the Western District of  
4 Washington. It does not bind any other United States Attorney's Office or any other  
5 office or agency of the United States, or any state or local prosecutor.

6  
7 Dated this 2<sup>d</sup> day of NOVEMBER, 2007.

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10   
11 JOSEPH C. LAVIN  
12 Defendant

13   
14 MICHAEL MARTIN  
15 Attorney for Defendant

16   
17 KATHERYN KIM FRIERSON  
18 Assistant United States Attorney

19   
20 CARL BLACKSTONE  
21 Assistant United States Attorney