

6-16-2016
FILED

JUN 16 2016

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGE MATTHEW F. KENNELLY
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

v.

BRADLEY N. DAVIS,

Defendant.

Criminal No.

Filed

Violation:

PLEA AGREEMENT

The United States of America and Bradley N. Davis ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

I. The defendant understands his rights:

- (a) to be represented by an attorney;
- (b) to be charged by Indictment;
- (c) to plead not guilty to any criminal charge brought against him;
- (d) to have a trial by jury, at which he would be presumed not

guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;

(e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;

- (f) not to be compelled to incriminate himself;
- (g) to appeal his conviction, if he is found guilty; and
- (h) to appeal the imposition of sentence against him.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence does not exceed the top of the Sentencing Guidelines incarceration range associated with the adjusted offense level determined by the Court, and does not include a criminal fine in excess of \$430,361.20, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Consistent with Fed. R. Crim. P. 11(b)(1)(O), the defendant recognizes that if he is not a citizen of the United States pleading guilty may have consequences with respect to his immigration status, including removal from the United States, denial of citizenship, and denial of admission to the United States in the future. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a one-count Information to be filed in the United States District Court for the Northern District of Illinois. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by agreeing to allocate customers of their location services sold in the United States, from at least as early as November 2003 until at least August 2012, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant will plead guilty to the criminal charge described in Paragraph 2 above pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. The United States agrees that at the arraignment, it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For purposes of this Plea Agreement, the "relevant period" is that period from at least as early as November 2003 until at least August 2012. During the relevant period, the defendant was Vice President of Brandenburger & Davis, an entity organized and existing under the laws of California and with its principal place of business in Sacramento, California. During the relevant period, Brandenburger & Davis was a provider of heir location services and was engaged in the sale of heir location services in the United States. Heir location service providers identify heirs to estates of intestate decedents and, in exchange for a contingency fee, develop evidence and prove-up heirs' claims to an inheritance in probate court. The volume of commerce attributable to Brandenburger & Davis under U.S.S.G. §§ 1B1.3 and 2R1.1 associated with estates opened in probate court during the relevant period totaled at least \$8,607,223.

(b) During the relevant period, the defendant participated in a conspiracy with other persons and the major heir location services provider specified in Paragraph 1 of Attachment A filed under seal (hereinafter "Company 1"), the primary purpose of which was to allocate customers and maintain prices of heir location services sold in the United

States. In furtherance of the conspiracy, the defendant engaged in discussions and correspondence with representatives of Company 1. During these discussions and correspondence, agreements were reached to allocate customers of heir location services sold in the United States. The conspiracy involved at least five participants.

(c) During the relevant period, records and documents necessary for the sale and provision of heir location services that were secured by one or more of the co-conspirators, as well as payments and solicitations for those services, traveled in interstate commerce. The business activities of Brandenburger & Davis and co-conspirators in connection with the sale and provision of heir location services that were the subject of this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(d) Acts in furtherance of this conspiracy were carried out within the Northern District of Illinois, Eastern Division. The conspiratorial discussions and correspondence described above took place in the United States, and heir location services that were the subject of this conspiracy were provided by one or more of the conspirators to at least one customer in this District.

ELEMENTS OF THE OFFENSE

5. The elements of the charged offense are that:

- (a) the conspiracy described in the Information existed at or about the time alleged;
- (b) the defendant knowingly became a member of the conspiracy; and
- (c) the conspiracy described in the Information either substantially affected interstate commerce in goods or services or occurred within the flow of interstate commerce in goods and services.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

- (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);
- (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and
- (c) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to two (2) years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") §5D1.2(a)(2)).

7. In addition, the defendant understands that:

- (a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the Court may order him to pay restitution to the victims of the offense; and
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater

punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed. The parties agree there is no *ex post facto* issue under the November 1, 2015 Guidelines Manual. The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(B) and subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 20 of this Plea Agreement, the United States and the defendant agree that the following Sentencing Guidelines apply:

- | | | |
|-----|--|----|
| (a) | Base Offense Level, U.S.S.G. § 2R1.1(a): | 12 |
| (b) | Volume of Commerce, U.S.S.G. § 2R1.1(b)(2)(A) | |
| | (stipulated to be \$8,607,223.98): | +2 |
| (c) | Clear demonstration of acceptance of responsibility for his offense, | |
| | U.S.S.G. § 3E1.1(a): | -2 |

- (d) Fine calculated as one to five percent of the volume of commerce
(stipulated to be \$8,607,223.98) but not less than \$20,000,

U.S.S.G. § 2R1.1(c)(1): \$86,072.24 - \$430,361.20

Total: 12

10. The defendant and the United States do not agree as to the applicability of U.S.S.G. § 3B1.1. Both parties are free to argue for or oppose its applicability at sentencing.

11. The United States agrees it will make a motion in support of a reduction of one additional offense level point pursuant to U.S.S.G. § 3E1.1(b) should the defendant meet that Guideline's offense level prerequisite. However, should the United States obtain or receive additional evidence or information prior to sentencing that, in its sole discretion, it determines to be credible and materially in conflict with the application of U.S.S.G. § 3E1.1(b), then the United States shall no longer be bound by this provision.

12. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The parties agree not to seek at the sentencing hearing any Guidelines adjustment for any reason that is not set forth in this Plea Agreement.

13. The defendant understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. The United States cannot and does not make any promises or representations as to what sentence the defendant will receive. However, the United States will inform the Court and the Probation Office of (a) this Agreement; (b) the nature and extent of the defendant's activities with respect to this case and all other activities of the defendant which the United States deems relevant to sentencing; and (c) the nature and extent of

the defendant's cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by defendant both prior and subsequent to the signing of this Agreement. The United States reserves the right to make any statement to the Court or the Probation Office concerning the nature of the criminal violation charged in the attached Information, the participation of the defendant therein, and any other facts or circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of the defendant, and to supply any other information that the Court may require. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until his cooperation is complete.

14. The United States and the defendant are free to recommend or argue for any specific sentence to the Court, although the United States and the defendant agree not to recommend or argue for the imposition of a criminal fine amounting to less than \$20,000. The defendant agrees to pay any fine imposed by the Court that does not exceed \$86,072.24 to the United States in full before the fifteenth (15th) day after the date of judgment.

15. In light of the availability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, and because complex issues of fact relating to the determination of restitution would complicate or prolong the sentencing process to a degree that the need to provide restitution is outweighed by the burden on the sentencing process, the parties agree to recommend that the defendant's sentence not include a restitution order for the offense charged in the Information.

16. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 20 of this Plea Agreement, and prior to sentencing in this case, the United States

agrees that it will make a motion, pursuant to U.S.S.G. §5K1.1, advising the sentencing judge of all relevant facts pertaining to that determination and requesting that the Court sentence the defendant in light of the factors set forth in U.S.S.G. § 5K1.1(a)(1)-(5). It is understood that should the United States determine that the defendant has violated any provision of this Plea Agreement, such a determination will release the United States from any obligation to make a motion pursuant to U.S.S.G. § 5K1.1, but will not entitle the defendant to withdraw his guilty plea once it has been entered. The defendant further understands that, whether or not the United States makes a motion pursuant to U.S.S.G. § 5K1.1, the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

17. Either party is free to ask the Court to also consider the factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. Either party is free to oppose the other party's sentencing recommendation based on those factors.

18. The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

19. The United States and the defendant understand that the Court retains complete discretion to accept or reject either party's sentencing recommendation. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose either party's sentencing recommendation, he nevertheless has no right to withdraw his plea of guilty.

DEFENDANT'S COOPERATION

20. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the current federal investigation of violations of federal antitrust and related criminal laws involving Company 1 and involving the sale of heir location services in the United States, and any litigation or other proceedings arising or resulting from such investigation

to which the United States is a party (collectively "Federal Proceeding"). Federal Proceeding includes, but is not limited to, an investigation, prosecution, litigation, or other proceeding regarding obstruction of, the making of a false statement or declaration in, the commission of perjury or subornation of perjury in, the commission of contempt in, or conspiracy to commit such offenses in, a Federal Proceeding. The full, truthful, and continuing cooperation of the defendant will include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine, in the possession, custody, or control of the defendant, that are requested by attorneys and agents of the United States in connection with any Federal Proceeding;

(b) making himself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States in connection with any Federal Proceeding;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or conspiracy to commit such offenses;

(d) otherwise voluntarily providing the United States with any material or information not requested in (a) - (c) of this paragraph and not protected under the attorney-client privilege or work-product doctrine that he may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

GOVERNMENT'S AGREEMENT

21. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 20 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the sentence, the United States agrees that it will not bring further criminal charges against the defendant for any act or offense committed before the date of signature of this Plea Agreement that was undertaken in furtherance of any antitrust conspiracy involving Company 1 and involving the sale of heir location services in the United States ("Relevant Offense"). The nonprosecution terms of this paragraph do not apply to (a) any antitrust conspiracy involving the sale of heir location services in the United States that does not involve Company 1; (b) any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; (c) civil matters of any kind; (d) any violation of the federal tax or securities laws or conspiracy to commit such offenses; or (e) any crime of violence.

22. The defendant understands that he may be subject to suspension or debarment action by state or federal agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls what action, if any, other agencies may take. However, the

Antitrust Division agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what action, if any, to take. The defendant nevertheless affirms that he wants to plead guilty regardless of any suspension or debarment consequences of his plea.

REPRESENTATION BY COUNSEL

23. The defendant has reviewed all legal and factual aspects of this case with his attorneys and is fully satisfied with his attorneys' legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorneys and has received satisfactory explanations from his attorneys concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorneys and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

24. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement and Attachment A. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

25. The defendant agrees that, should the United States determine in good

faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full, truthful, and continuing cooperation, as defined in Paragraph 20 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, email, or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant will be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of signature of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

26. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement because of the defendant's violation of this Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

27. This Plea Agreement and Attachment A constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case.

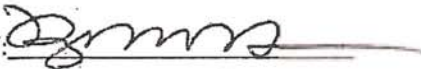
This Plea Agreement and Attachment A cannot be modified except in writing, signed by the United States and the defendant.

28. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

29. A facsimile or PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED: 6-21-16

Respectfully submitted,

BY: 

Bradley N. Davis
Defendant

BY: 

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