

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

OCT 5 2004

Michael N. Milby, Clerk of Court

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TIMOTHY DESPAIN, )  
 )  
 Defendant. )  
\_\_\_\_\_ )

No. CR-H- 04-449

COOPERATION AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Department of Justice by the Enron Task Force (“the Department”) and Timothy Despain (“Defendant”) agree to the following (the “Agreement”):

1. Defendant will waive indictment and plead guilty in the Southern District of Texas to an information charging him with one count of conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371. The charge carries the following statutory penalties:

- a. Maximum term of imprisonment: 5 years  
(18 U.S.C. § 371)
- b. Minimum term of imprisonment: 0 years  
(18 U.S.C. § 371)
- c. Maximum supervised release term: 3 years, to follow any term of imprisonment; if a condition of release is violated, Defendant may be sentenced to up to two years without credit for pre-release imprisonment or time previously served on post-release supervision  
(18 U.S.C. §§ 3583 (b) & (e))
- d. Maximum fine: \$250,000 or twice the gain/loss  
(18 U.S.C. § 3571(b)(3))

- e. Restitution: As determined by the Court pursuant to statute.  
(18 U.S.C. §§ 3663 and 3663A)
- f. Special Assessment: \$100  
(18 U.S.C. § 3013)

Sentencing Guidelines

2. The Defendant agrees that his sentence is governed by the United States Sentencing Guidelines (the "Guidelines"). Additionally, the defendant (a) waives any right to have facts that determine the offense level<sup>1</sup> under the Guidelines alleged in an indictment and found by a jury beyond a reasonable doubt, (b) agrees that the facts that determine the offense level will be found by the court at sentencing by a preponderance of the evidence, unless it is determined that this burden of proof cannot be waived, and that the court may consider any reliable evidence, including hearsay, and (c) waives any constitutional challenge to the validity of the Guidelines. The parties agree that Defendant's sentence is governed by the November 2000 Guidelines and that U.S.S.G. § 2F1.2 governs the determination of the applicable offense level and sentence, capped by the statutory maximum of 60 months. The Department agrees, based on information known to it on the date of this Agreement, that (a) Defendant does not qualify for an aggravating role adjustment under U.S.S.G. § 3B1.1; and (b) the Department will not oppose a downward adjustment of three levels for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1.

3. The Department will advise the Court and the Probation Office of information relevant to sentencing, including criminal activity engaged in by Defendant, and all such

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<sup>1</sup>The term "offense level" includes the base offense level plus all specific offense characteristics, enhancements and adjustments.

information may be used by the Court in determining Defendant's sentence. Defendant understands that the parties' positions regarding the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge.

#### Waiver of Rights

4. Defendant will not appeal or collaterally attack his conviction or guilty plea.

Defendant does not waive his right to appeal or collaterally attack his sentence based upon the law at the time of sentencing.

5. Defendant waives all defenses based on venue (but reserves the right to request a change of venue if his plea is vacated or plea withdrawn), speedy trial under the Constitution and Speedy Trial Act, and the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed, in the event that (a) Defendant's conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) Defendant's plea is later withdrawn. Defendant also waives his right to be charged by indictment returned by a duly constituted grand jury in the Southern District of Texas and consents to be charged by Information filed by the Acting United States Attorney.

6. Defendant understands that by pleading guilty he is waiving important rights including: (a) the right to persist in his previously entered plea of not guilty; (b) the right to a jury trial with respect to guilt or sentencing; (c) the right to be represented by counsel - and if necessary to have the court appoint counsel to represent him - at trial and at every other stage of the proceedings; (d) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; and (e) the right to additional discovery and disclosures from the

Department. Defendant waives any right to additional disclosure from the Department in connection with his guilty plea.

Defendant's Obligations

7. Defendant will provide truthful, complete, and accurate information to and will cooperate fully with the Department, both before and after he is sentenced. This cooperation will include, but is not limited to, the following:

- a. Defendant agrees to make himself available at all meetings with the Department and to respond truthfully and completely to any and all questions put to him, whether in interviews, before a grand jury, or at any trial or other proceeding.
- b. Defendant waives all claims of attorney-client privilege related to communications with any counsel for Enron in his capacity as an officer and employee of Enron.
- c. Defendant agrees to provide any and all documents and other material that may be relevant to the investigation and that are in his possession or control.
- d. Except as required by law, Defendant agrees not to reveal any information derived from his cooperation to any third party (other than his counsel) without prior consent of the Department, and hereby instructs his attorneys to do the same. Defendant agrees to inform the Department of any attempt by any third party to interview, depose, or communicate in any way with him regarding this case, his cooperation, or any other information related to Enron or transactions involving Enron.
- e. Defendant agrees to testify truthfully at any grand jury, court, or other proceeding as directed by the Department.
- f. Defendant consents to adjournments of his sentencing hearing as requested by the Department and agrees that his obligations under this Agreement continue until the Department informs him in writing that his cooperation is concluded. Nothing in this paragraph pertains to the date that the Defendant may be required to report or surrender to the Bureau of Prisons or United States Marshal's Service in order begin the incarceratory portion of any sentence.

8. The Department and Defendant agree that Defendant's counsel may be present at any meetings or debriefings between Defendant and the Department, and the Department will endeavor to provide reasonable notice of such meetings or debriefings, but counsel's presence is not required and, if necessary, Defendant agrees to be present and cooperate notwithstanding his counsel's unavailability.

9. Defendant agrees not to accept remuneration or compensation of any sort, directly or indirectly, for the dissemination through books, articles, speeches, interviews, or any other means, of information regarding his work at Enron or Halliburton or the investigation or prosecution of any civil or criminal cases against him.

#### The Department's Obligations

10. The Department agrees that, except as provided in paragraphs 1, 5 and 13, no further criminal charges will be brought against Defendant for any heretofore disclosed participation in criminal activity in which he engaged in his capacity as an officer or employee of Enron and Halliburton.

11. The Department further agrees that no statements made by Defendant during the course of his cooperation will be used against him in any criminal proceedings instituted by the Department, except as provided in paragraphs 1, 3, 5 and 13.

12. If the Department determines, in its sole and exclusive discretion, that Defendant has cooperated fully, provided substantial assistance to law enforcement authorities, and otherwise complied with the terms of this Agreement, the Department will file a motion pursuant to U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553(e), or pursuant to Federal Rule of Criminal Procedure 35(b), with the sentencing court setting forth the nature and extent of Defendant's cooperation.

In this connection, Defendant understands that a determination by the Department as to whether Defendant has cooperated fully, provided substantial assistance, and otherwise complied with this Agreement, as well as the Department's assessment of the value, truthfulness, completeness, and accuracy of the cooperation, is binding on him. Defendant agrees that, in making these determinations, the Department may consider facts learned by the Department both before and after the signing of this Agreement. The Department may or may not, in its sole and exclusive discretion, recommend to the Court a specific sentence to be imposed. Except as otherwise set forth in this Agreement, the Department will not make a promise or representation to Defendant as to what sentence will be recommended by the Department. The Department does not and cannot make any promise as to what sentence will be imposed by the Court.

#### Breach of Agreement

13. Defendant must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes, including but not limited to perjury, making false statements, and obstruction of justice. Should Defendant violate any provision of this Agreement, Defendant will not be released from his guilty pleas but the Department will be released from all its obligations under this Agreement, including its promise not to prosecute Defendant for any heretofore disclosed participation in criminal activity. Defendant agrees that, in any such prosecution, all statements and other information that he has provided at any time, including all statements he has made and all evidence he has produced during proffers, interviews, testimony, and otherwise, may be used against him, regardless of any constitutional provision, statute, rule, prior agreement, or other term of this Agreement to the contrary.

Hyde Amendment Waiver

14. Defendant agrees that with respect to all charges contained in the Information in the above-captioned action, he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, PL 105-119 (Nov. 26, 1997), and will not file any claim under that law.

Scope

15. This Agreement does not bind any federal, state, or local prosecuting authority other than the Department, and does not prohibit the Department or any other department, agency, or commission of the United States from initiating or prosecuting any civil, administrative, or tax proceedings directly or indirectly involving Defendant.

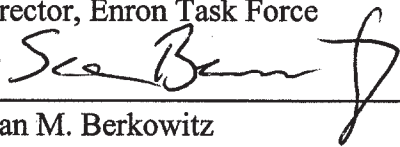
Complete Agreement

16. Apart from the written proffer agreements originally dated July 2, 2004, no promises, agreements or conditions have been entered into by the parties other than those set forth in this Agreement and none will be entered into unless memorialized in writing and signed by all parties. This Agreement supersedes all prior promises, agreements, or conditions between the parties, including the written proffer agreement. To become effective, this Agreement must be signed by all signatories listed below and in the addenda.

Dated: Houston, Texas  
October 5, 2004

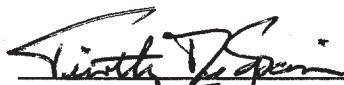
ANDREW WEISSMANN  
Director, Enron Task Force

By:

  
Sean M. Berkowitz  
Assistant United States Attorney  
Enron Task Force

ADDENDUM FOR DEFENDANT DESPAIN

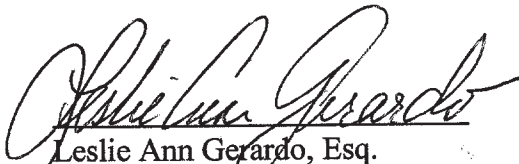
I have consulted with my attorneys and fully understand all my rights with respect to the Information. I have consulted with my attorneys and fully understand all my rights with respect to the provisions of the U.S. Sentencing Commission's Guidelines Manual which may apply in my case. I have read this Agreement and carefully reviewed every part of it with my attorneys. No promises have been made to me by the Department except as set forth in this Agreement. I waive my right to be charged by indictment. I understand this Agreement and I voluntarily agree to it.

  
\_\_\_\_\_  
Timothy Despain  
Defendant

October 5, 2004  
Date

ADDENDUM FOR DEFENSE COUNSEL

I have fully explained to Defendant Despain his rights with respect to the Information. I have reviewed the provisions of the U.S. Sentencing Commission's Guidelines Manual and I have fully explained to Defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this Agreement with Defendant. To my knowledge, Defendant's decision to waive indictment and enter into this Agreement is an informed and voluntary one.

  
Leslie Ann Gerardo, Esq.  
Attorney for Defendant Despain

10/5/04  
Date

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) Cr. No. H-04  
)  
TIMOTHY DESPAIN, )  
)  
Defendant. )  
\_\_\_\_\_)

SENTENCE DATA SHEET

DEFENDANT: Timothy Despain

CRIMINAL NO:

GUILTY PLEA: Count 1 (Conspiracy to Commit Securities Fraud)

SUBSTANCE OF AGREEMENT: Pursuant to Fed. R. Crim. P. 11(c)(1)(B), Defendant will plead guilty to the Information, charging him with conspiracy to commit securities fraud.

COUNT ONE: Conspiracy (18 U.S.C. § 371)

ELEMENTS: 1) An agreement between two or more persons,  
2) to commit a crime against the United States, and  
3) an overt act committed by one of the conspirators in furtherance of the agreement.

PENALTY: Imprisonment not to exceed 5 years and a fine not to exceed \$250,000 or twice gain/loss. 18 U.S.C. §§ 371 and 3571(b)(3). Supervised release after imprisonment of not more than 3 years. 18 U.S.C. §§ 3559(a)(4) and 3583(b)(2).

SENTENCING GUIDELINES: Applicable.  
SPECIAL

ASSESSMENT: \$100. 18 U.S.C. § 3013(a)(2)(A).

ATTACHMENT: Plea Agreement

DEFENDANT

WAIVED HIS

RIGHT TO

APPEAL:

Defendant will not appeal or collaterally attack his conviction or guilty plea. Defendant does not waive his right to appeal or collaterally attack his sentence based upon the law at the time of sentencing.