

ORIGINAL

GUILTY PLEA and PLEA AGREEMENT

United States Attorney
Northern District of Georgia

FILED IN OPEN COURT
U.S.D.C. - Atlanta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

OCT 30 2007

JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

CRIMINAL NO. 1:05-CR-612-RWS
(First Superseding)

T.R. SHANTHA, defendant, having received a copy of the above-numbered First Superseding Indictment and having been arraigned, hereby pleads GUILTY to Count(s) One thereof. The defendant, his counsel, and the United States Attorney for the Northern District of Georgia ("the Government"), as counsel for the United States, subject to approval by the Court, have agreed upon a negotiated plea in this case, the terms of which are as follows:

1. ADMISSION OF GUILT

The defendant admits that he is pleading guilty because he is in fact guilty of the crime(s) charged in Count(s) One of the First Superseding Indictment.

2. TRIAL RIGHTS

The defendant understands that by pleading guilty, he is giving up the right to plead not guilty and the right to be tried by a jury. At a trial, the defendant would have the right to an attorney, and if the defendant could not afford an attorney, the Court would appoint one to represent the defendant. During the trial, the defendant would be presumed innocent and the Government would have the burden of proving his guilt beyond a reasonable doubt. The defendant would have the right to confront and cross-examine the witnesses against him. If the defendant wished, he could testify on his own behalf and present evidence in his defense, and he could subpoena witnesses to testify on his behalf. If, however, the defendant did not wish to testify, that fact could not be used against him. If the defendant were found guilty after

a trial, he would have the right to appeal the conviction. The defendant understands that by pleading guilty, he is giving up all of these rights and there will not be a trial of any kind. The defendant also understands that he ordinarily would have the right to appeal his sentence and, under some circumstances, to attack the sentence in post-conviction proceedings. By entering this Plea Agreement, the defendant may be waiving some or all of those rights to appeal or collaterally attack his sentence, as specified below. Finally, the defendant understands that, to plead guilty, he may have to answer questions posed to him by the Court concerning the rights that he is giving up and the facts of this case, and the defendant's answers, if untruthful, may later be used against him in a prosecution for perjury or false statements.

3. MAXIMUM AND MANDATORY MINIMUM PENALTIES

The defendant understands that, based on his plea of guilty, he will be subject to the following maximum and mandatory minimum penalties:

- (a) Maximum term of imprisonment: ten years incarceration.
- (b) Mandatory minimum term of imprisonment: none.
- (c) Term of supervised release: up to three years.
- (d) Maximum fine: \$250,000.
- (e) Full restitution to all victims of the offense(s) and relevant conduct.
- (f) Mandatory special assessment: \$100.

The defendant understands that, before imposing sentence in this case, the Court will be required to consider, among other factors, the provisions of the United States Sentencing Guidelines. Ultimately, it is within the Court's discretion to impose a sentence up to and including the statutory maximum. The defendant also understands that no one can predict his exact sentence at this time.

4. DISMISSAL OF COUNTS

The Government agrees that upon the sentencing of the defendant, and with leave of the Court, it will file a dismissal of Counts Two through Eighty-Seven of the First Superseding Indictment, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure. The defendant understands that the Probation Office and the Court may still consider the conduct underlying such dismissed counts in determining relevant conduct under the Sentencing Guidelines.

5. ACCEPTANCE OF RESPONSIBILITY

The Government will recommend that the defendant receive the two-level adjustment for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, and the additional one-level adjustment if the offense level is 16 or higher. However, the Government will not be required to recommend acceptance of responsibility if, after entering this Plea Agreement, the defendant engages in conduct inconsistent with accepting responsibility. Thus, by way of example only, should the defendant falsely deny or falsely attempt to minimize his involvement in relevant offense conduct, give conflicting statements about his involvement, fail to pay the special assessment, or participate in additional criminal conduct, including unlawful personal use of a controlled substance, the Government will not be required to recommend acceptance of responsibility.

6. SPECIFIC GUIDELINE RECOMMENDATIONS

Based upon the evidence currently known to the Government, the Government will recommend the following applications of the Sentencing Guidelines:

- (a) The applicable offense guideline is Section 2B1.1.
- (b) The amount of loss resulting from the offense(s) of conviction and all relevant conduct is more than \$200,000 but less than \$400,000.

(c) Under Section 2B1.1(b) (2) (A) (I), the offense involved 10 or more victims.

7. RESTITUTION

The defendant agrees to pay full restitution to all victims of the offense(s) to which he is pleading guilty and any relevant conduct. The defendant understands that the amount of restitution owed to each victim will be determined at or before sentencing, but agrees that the total of such restitution is no more than \$380,966. The restitution amount will be paid at or before sentencing. The defendant acknowledges and agrees that none of the seized property will be released to him until full payment of the restitution order has been made. If payment of the restitution order is not made at or before sentencing, the defendant consents to an order of forfeiture that will include any deficiency.

8. FORFEITURE

The defendant agrees that he shall immediately forfeit to the United States a sum of money equal to the difference between \$650,000.00 and the amount of the restitution paid at or before sentencing. The forfeiture judgment represents the proceeds obtained as a result of the scheme to defraud, in violation of 18 U.S.C. § 1347, as alleged in the First Superseding Indictment and is subject to forfeiture pursuant to 18 U.S.C. § 981(a) (1) (C) and 28 U.S.C. § 2461(c). The defendant agrees to pay the forfeiture money judgment to the United States by immediately turning over to the United States all funds maintained at his Ameritrade investment account and paying the difference at or before sentencing. The defendant acknowledges and agrees that none of the seized property will be released to him until full payment of the forfeiture judgment and restitution has been made to the United States. If full payment of the forfeiture judgment and the restitution order is not made before or at sentencing, the defendant consents to the

entry of an order of forfeiture of any of the seized assets as substitute res up to the amount of the deficiency.

The defendant agrees to hold all law enforcement agents and the United States, its agents, and its employees harmless from any claims whatsoever arising in connection with the seizure or forfeiture of any asset covered by this agreement.

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, collateral attack, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. As to any asset described by this Plea Agreement, the defendant hereby waives the requirements of 18 U.S.C. § 983, Rule 4 of the Federal Rules of Civil Procedure, and Supplemental Rule C, regarding notice of seizure in judicial forfeiture matters and the requirements of Federal Rules of Criminal Procedure 7, 11, 32.2, 41, and 43 as they apply in any manner to any forfeiture issue.

By entering into this Plea Agreement, the defendant authorizes the Court to immediately enter a preliminary order of forfeiture against all property described by this agreement, consents to that order becoming final as to him at the time of entry, and agrees that the order shall become part of his sentence and be incorporated into the judgment against him automatically at the time of its entry without further action from the Court. If the forfeiture is to be accomplished in a parallel civil action, the defendant consents to the entry of a civil Judgment and Order of Forfeiture without further notice to him and waives all defenses to forfeiture as described above. To the extent that the government institutes or has instituted any civil judicial forfeiture proceeding to which the defendant is or becomes a party, the defendant agrees that he shall be responsible for his attorneys fees and costs incurred in connection with that action.

In addition, the defendant agrees not to file a Statement of Interest, Answer, claim, or petition for remission for any asset

forfeited under this agreement. The defendant agrees to take all steps requested by the United States to complete the forfeiture, to cooperate truthfully and completely with the Government in all matters related to the forfeiture, and to testify truthfully in any forfeiture proceeding relating to his cooperation.

The defendant acknowledges that he is not entitled to use forfeited assets to satisfy any tax obligations, restitution, fine, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture. To the extent that the United States remits proceeds of an asset forfeited in connection with this case to a person or entity entitled to receive restitution from the Defendant, upon a determination that Defendant has no other assets from which to satisfy, in whole or in part, any restitution obligation, the Defendant may ask the Court to reduce his restitution obligation by the amount remitted to that victim.

9. SPECIAL ASSESSMENT

The defendant understands that the Court will order him to pay a special assessment in the amount of \$100.

10. RIGHT TO STATE FACTS/MAKE RECOMMENDATIONS

The Government reserves the right to inform the Court and the Probation Office of all facts and circumstances regarding the defendant and this case, and to respond to any questions from the Court and the Probation Office and to any misstatements of fact or law. Except as expressly stated elsewhere in this Plea Agreement, the Government also reserves the right to make recommendations regarding application of the Sentencing Guidelines.

11. LIMITED WAIVER OF APPEAL

To the maximum extent permitted by federal law, the defendant voluntarily and expressly waives the right to appeal the conviction and sentence and the right to collaterally attack his sentence in any post-conviction proceeding, including a § 2255, on any ground, except that the defendant may file a direct appeal of a sentence higher than the otherwise applicable advisory sentencing guideline range. The defendant understands that this Plea Agreement does not

limit the Government's right to appeal, but if the Government appeals the sentence imposed, the defendant may also file a direct appeal of his sentence.

12. DNA WAIVER

The parties agree that no biological evidence (as defined in 18 USC § 3600A) has been identified in this case; therefore, the defendant understands and agrees that no evidence will be preserved for DNA testing.

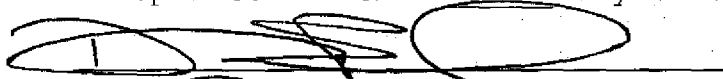
13. NONBINDING AGREEMENT

The defendant understands and agrees that the recommendations of the Government incorporated within this Plea Agreement or otherwise discussed between the parties are not binding on the Court and that the Court's failure to accept one or more of the recommendations will not constitute grounds to withdraw his guilty plea or to claim a breach of this Plea Agreement.

14. NO OTHER AGREEMENTS

There are no other agreements, promises, representations, or understandings between the defendant and the Government.

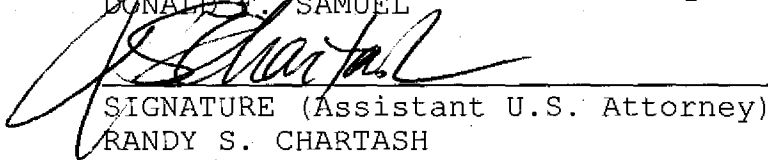
In Open Court this _____ day of October, 2007.



SIGNATURE (Attorney for Defendant)
DONALD F. SAMUEL

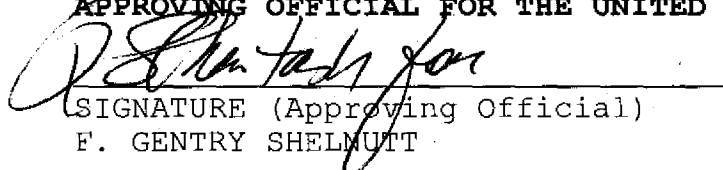


SIGNATURE (Defendant)
T.R. SHANTHA



SIGNATURE (Assistant U.S. Attorney)
RANDY S. CHARTASH

THIS DOCUMENT IS A DRAFT FOR THE PURPOSE OF DISCUSSION. NO PLEA OFFER IS MADE UNTIL AND UNLESS THIS DOCUMENT IS SIGNED BY AN APPROVING OFFICIAL FOR THE UNITED STATES ATTORNEY'S OFFICE.



SIGNATURE (Approving Official)
F. GENTRY SHEL MUTT

1030-07

DATE

I have read the First Superseding Indictment against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the Government would have to prove

to convict me at a trial. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my sentence or challenging my sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the Government toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.


SIGNATURE (Defendant)

10/30/07
DATE

I am T.R. SHANTHA's lawyer. I have carefully reviewed the charges and the Plea Agreement with my client. To my knowledge, my client is making an informed and voluntary decision to plead guilty and to enter into the Plea Agreement.


SIGNATURE (Defense Attorney)

10/30/07
DATE

INFORMATION BELOW MUST BE TYPED OR PRINTED

DONALD F. SAMUEL
NAME (Attorney for Defendant)

T.R. SHANTHA
NAME (Defendant)

3151 Maple Drive, N.E.
STREET

STREET

Atlanta, GA 30305
CITY & STATE ZIP CODE

CITY & STATE ZIP CODE

PHONE NUMBER (404) 262-2225

PHONE NUMBER _____

STATE BAR OF GEORGIA NUMBER _____

Filed in Open Court

By _____

U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIMINAL ACTION NO.:	1:05-CR-612-RWS (First Superseding)
DEFENDANT'S NAME:	T.R. SHANTHA
PAY THIS AMOUNT:	\$100

INSTRUCTIONS:

1. PAYMENT MUST BE MADE BY **CERTIFIED CHECK** OR **MONEY ORDER** PAYABLE TO:

CLERK OF COURT, U.S. DISTRICT COURT

PERSONAL CHECKS WILL NOT BE ACCEPTED

2. PAYMENT MUST REACH THE CLERK'S OFFICE WITHIN 30 DAYS OF THE ENTRY OF YOUR GUILTY PLEA
3. PAYMENT SHOULD BE SENT OR HAND DELIVERED TO:

Clerk of Court, U.S. District Court
2211 U.S. Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30303

(Do not Send Cash)

4. INCLUDE DEFENDANT'S NAME ON **CERTIFIED CHECK** OR **MONEY ORDER**
5. ENCLOSE THIS COUPON TO INSURE PROPER AND PROMPT APPLICATION OF PAYMENT
6. PROVIDE PROOF OF PAYMENT TO THE ABOVE-SIGNED AUSA WITHIN 30 DAYS OF THE GUILTY PLEA