EXHIBIT A

STATEMENT OF FACTS IN SUPPORT OF PLEA AGREEMENT AND INFORMATION

Defendant HOWARD J. VOGEL represents and admits that the following facts are true:

1. HOWARD J. VOGEL ("VOGEL") is a retired real estate mortgage broker who, during the time relevant, resided in New Jersey and Florida. Between 1991 and continuing into 2005, VOGEL, certain of his family members, and a trust of which VOGEL was sole trustee (the "Howard Vogel Retirement Plan," hereinafter referred to as "HVRP"), served as representative plaintiffs in class action and shareholder derivative lawsuits filed in federal and state courts throughout the United States. The law firm representing VOGEL, his family members, HVRP, and other class members, was headquartered in New York, New York, and specialized in representing plaintiffs in securities class action and shareholder derivative lawsuits (hereinafter the "New York Law Firm").

***Valero I* and the New York Law Firm's Agreement to Pay Kickbacks to VOGEL**

2. In or about 1991, VOGEL approached the New York Law Firm to explore filing a class action lawsuit against Valero Energy Corp. ("Valero"). VOGEL's father had known one of the original named partners of the New York Law Firm, and VOGEL understood the New York Law Firm to specialize in representing plaintiffs in securities class action cases. VOGEL was not referred to the New York Law Firm by any attorney.

3. At the New York Law Firm, VOGEL was directed to a partner of the firm (hereinafter "Partner E") to discuss the possibility of a class action against Valero. During his discussions with Partner E, VOGEL stated that, in exchange for VOGEL having brought the case

EXHIBIT A

to the New York Law Firm and for serving as the plaintiff, he expected to share in the New York Law Firm's attorneys' fees that would be awarded in the case. Partner E confirmed that VOGEL would be paid.

4. Thereafter, on or about August 20, 1991, the New York Law Firm filed a class action lawsuit against Valero in the state court of Texas with VOGEL named as the representative class plaintiff. Howard J. Vogel v. Valero Energy Corp., et al., No. 1991 CI 12179 (Bexar County, Texas District Court) (hereinafter "Valero I").

5. In or about mid-1992, VOGEL met with Partner E and another partner of the New York Law Firm (hereinafter "Partner C"). Partner C and Partner E told VOGEL that the New York Law Firm would not pay him directly. It was explained to VOGEL that since he was a plaintiff, a possible conflict of interest arose from his receipt of payment from the New York Law Firm. In his discussions with Partner C and Partner E, VOGEL was told that he needed to find a lawyer through whom the New York Law Firm would pay VOGEL. Partner C and Partner E explained that this was an established practice of the New York Law Firm. Based on his discussions with Partner C and Partner E, VOGEL understood that the New York Law Firm paid other individuals to serve as representative plaintiffs for the New York Law Firm.

6. In accordance with Partner C and Partner E's instructions, VOGEL enlisted the assistance of an attorney in Denver, Colorado (hereinafter "Vogel Intermediary A") to receive monies from the New York Law Firm on VOGEL's behalf.

7. At some point around the time of the settlement of Valero I, VOGEL and his wife met with Partner C and Partner E in the offices of the New York Law Firm to finalize the terms of VOGEL's payment in Valero I. VOGEL stated that he believed he should receive 16-17% of

the New York Law Firm's attorneys' fees. Partner C agreed that the New York Law Firm would pay VOGEL 14% of the fees it obtained in Valero I. In addition, Partner C agreed that the New York Law Firm would separately reimburse VOGEL for losses sustained by him in connection with the eventual sale of his Valero securities. Since VOGEL had not yet sold his Valero units and incurred any actual loss, Partner C stated that the New York Law Firm would pay VOGEL an additional $10,000 in anticipation of VOGEL's losses from the future sale of his Valero units.

8. The New York Law Firm reached a settlement of Valero I in October 1992. On or about October 14, 1992, Partner E forwarded to Vogel Intermediary A a purported "retainer agreement," which stated in relevant part:

> This will confirm that we have been retained by Howard Vogel . . . to prosecute a class action [against] Valero Natural Gas Partners L.P., and a derivative action on behalf of the partnership. On the basis of your efforts in this matter and your having shared in the work and responsibility in this matter, we will pool all fees awarded to us and you shall receive 14% (fourteen percent) of the fees so awarded plus $10,000.

On or about October 21, 1992, Vogel Intermediary A executed the agreement and returned it to Partner E.

9. This "retainer agreement" contained several false and misleading statements. In fact, Vogel Intermediary A had not provided "efforts" in Valero I; Vogel Intermediary A did not share in the work and responsibility in the matter; and the New York Law Firm was not paying Vogel Intermediary A for any work performed by Vogel Intermediary A in connection with Valero I. Rather, pursuant to the preexisting agreement with VOGEL, the New York Law Firm was paying VOGEL, through Vogel Intermediary A, for having served as a representative plaintiff in Valero I.

10. On or about December 24, 1992, the New York Law Firm obtained an attorneys' fees award in Valero I of approximately $4.5 million. On or about December 28, 1992, the New York Law Firm sent to Vogel Intermediary A a check in the amount of $637,223, an amount equivalent to approximately 14% of the New York Law Firms' fee plus $10,000. Vogel Intermediary A then caused to be transferred substantially all of the proceeds of this check to VOGEL.

The *Valero II* Class Action

11. On or about October 15, 1993, the New York Law Firm filed a class action complaint against Valero Energy Corp., and others, naming VOGEL as a representative plaintiff, in the Court of Chancery of the State of Delaware. Howard J. Vogel v. Benninger, et al., C.A. No. 13194 (Del. Ch. Court) (hereinafter "Valero II").

12. By March 1994, VOGEL understood from his discussions with Partner E that the New York Law Firm anticipated reaching a settlement in Valero II that would involve the sale of the Valero units of VOGEL and other class members, and result in the New York Law Firm obtaining substantial attorneys' fees. VOGEL further contemplated that the New York Law Firm would again pay VOGEL his share of attorneys' fees through Vogel Intermediary A. By this time VOGEL had also determined that his cash loss with respect to the sale of his Valero units would be $17,660, taking into account the $10,000 contribution toward his future loss that the New York Law Firm had previously paid VOGEL in December 1992 in connection with Valero I. As a result, on or about March 13, 1994, VOGEL sent a letter to Partner E which stated in relevant part:

> I have an unrecovered cash loss of $17,600 (attached in another copy of the computation of this loss.) Consequently, upon your issuance of the fee letter to [Vogel Intermediary A], I am again asking that you add the sum of $17,600. This loss is not a bookkeeping entry; it's real money – no different than the out of pocket disbursements that your firm incurs to maintain the case.

The computation of VOGEL's loss included with his March 13, 1994 letter was in the form of a handwritten summary dated December 20, 1993 that referenced the New York Law Firm's $10,000 payment with this explanation: "It was [Partner C's] position in late 1992 that since no loss was actually incurred, a contribution to the unknown future loss would be $10,000."

13. On or about May 31, 1994, the court approved a settlement of Valero II pursuant to which the New York Law Firm would receive an award of attorneys' fees. On June 2, 1994, Partner E telefaxed a letter to Vogel Intermediary A which stated: "This letter will confirm our fee sharing arrangement in [Valero II]. As Howard Vogel's referring attorney you will receive 14% of the legal fee that is paid to my firm, the [New York Law Firm]." This letter contained several false and misleading statements. In fact, Vogel Intermediary A was not a "referring attorney" for VOGEL, and was not receiving 14% of the New York Law Firm's fees therefore. Instead, pursuant to his preexisting agreement with VOGEL, the New York Law Firm was paying VOGEL, through Vogel Intermediary A, for serving as a representative plaintiff in Valero II.

14. On or about July 18, 1994, the New York Law Firm obtained approximately $499,006.39 in attorneys' fees in connection with Valero II. On that same date, Partner E caused to be sent a check in the amount of $69,860.89 to Vogel Intermediary A, accompanied by a cover letter stating: "Pursuant to our letter agreement concerning your firm's referral fee in this matter, I enclose a check in the amount of $69,860.89 which represents 14% of my firm's net fee of

$499,006." On or about July 26, 1994, VOGEL caused Vogel Intermediary A to wire transfer $69,848.39 to a bank account controlled by VOGEL.

The Ongoing Kickback Arrangement

15. Following Valero I and Valero II, VOGEL understood, based on his conversations with Partner C and Partner E, that he would receive 14% of the attorneys' fees obtained by the New York Law Firm in lawsuits in which VOGEL or a related individual or entity served as a representative plaintiff for the New York Law Firm (hereinafter the "Vogel Lawsuits"). (The 14% was reduced in later cases, as described below.) VOGEL further understood that he could not disclose his payment arrangement with the New York Law Firm to the courts presiding over, or the other parties to, the Vogel Lawsuits. VOGEL believed that the disclosure of his secret payment arrangement with the New York Law Firm could cause the courts presiding over the Vogel Lawsuits, among other things, to disapprove of him as a representative plaintiff; to disapprove of the New York Law Firm as class counsel; and to disallow the attorneys' fees requested in the Vogel Lawsuits by the New York Law Firm.

The *Mercer* Class Action and Subsequent Cash Payment

16. On or about June 23, 1994, the New York Law Firm filed a securities fraud class action lawsuit against Mercer Corp., naming VOGEL's wife as a representative plaintiff, in the United States District Court for the Central District of California. Vogel, et al. v. Mercer Int'l Inc., et al., 94-cv-04229-WJR (C.D. Cal.). VOGEL's wife was subsequently included as a plaintiff in the related class action pursued by the New York Law Firm in the Western District of Washington under the caption, In re Mercer International Securities Litigation, C94-553 WD (W.D. Wash.) (hereinafter "Mercer"). On or about May 24, 1996, in connection with a

settlement of Mercer, the New York Law Firm obtained approximately $151,794.37 in attorneys' fees.

17. Thereafter, VOGEL met with Partner E at his office at the New York Law Firm. Partner E handed VOGEL cash in an envelope constituting VOGEL's share of the attorneys' fees obtained by the New York Law Firm in Mercer. Partner E explained that the amount of cash being paid to VOGEL was less than VOGEL's usual 14% share of the attorneys' fees because VOGEL was being paid in cash, VOGEL would not have to report the cash on his tax returns, and there were other plaintiffs in Mercer with respect to whom the New York Law Firm had financial obligations.

The *Guaranty National I* Class Action

18. On or about May 17, 1996, the New York Law Firm filed a shareholder class action lawsuit against Guaranty National Corp., naming VOGEL's wife as a representative plaintiff, in the New York Supreme Court, County of New York. Vogel v. Guaranty National Corp., et al., No. 0602632/1996, (hereinafter "Guaranty National I"). On or about February 12, 1997, the New York Law Firm entered into a settlement of the Guaranty National class action. On or about June 2, 1997, another partner of the New York Law Firm (hereinafter "Partner D") submitted an affidavit in support of settlement and application for an award of attorneys' fees in Guaranty National I, as a result of which the New York Law Firm obtained $389,625 on or about July 11, 1997.

19. On or about August 8, 1997, Partner E caused a $44,115 check, constituting VOGEL's share of the attorneys' fees in Guaranty National I, to be paid to another intermediary attorney, located in New York, selected by VOGEL to receive payment from the New York Law

Firm (hereinafter "Vogel Intermediary B"). On or about August 18, 1997, Vogel Intermediary B caused to be sent a check in the amount of $44,115 to VOGEL.

The *Gaylord Container* Class Action and VOGEL's Deposition

20. On or about December 4, 1995, the New York Law Firm caused to be filed a class action complaint against Gaylord Container, Inc., naming VOGEL as a representative plaintiff, in the Court of Chancery of the State of Delaware. Howard Vogel, et al. v. Marvin A. Pomerantz, et al., C.A. No. 14722, later consolidated into In re Gaylord Container Corp. Shareholders Litigation, Consolidated Civil Action No. 14616 (hereinafter "Gaylord Container"). On or about July 21, 1998, VOGEL was deposed under oath in that action.

21. During his deposition, VOGEL was asked questions regarding his income. VOGEL refused to answer questions about his sources of income. VOGEL thereby concealed his agreement with the New York Law Firm to share in any attorneys' fees obtained in class action or shareholder derivative actions and concealed the fact that, by the time of his deposition, he had received approximately $750,000 from the New York Law Firm for serving, and causing his wife to serve, as a representative plaintiffs in class action and shareholder derivative lawsuits.

The *Oxford Health* Class Action and VOGEL's False *Reform Act* Declaration

22. Before October 1997, VOGEL read a research report, dated May 5, 1997, that contained negative financial analysis about Oxford Health Plans, Inc. ("OHP"). Based on this research report, VOGEL believed that OHP could become a target of a securities fraud class action lawsuit. Accordingly, on or about October 8, 1997, VOGEL purchased, on behalf of HVRP, 50 shares of OHP stock for the purpose of positioning himself and the New York Law

Firm to file a securities fraud class action lawsuit against OHP. VOGEL contacted Partner E of the New York Law Firm and discussed a potential securities fraud class action lawsuit against OHP.

23. On October 31, 1997, the New York Law Firm filed a securities fraud class action complaint against OHP, naming HVRP as the representative plaintiff, in the United States District Court for the District of Connecticut. Howard Vogel Retirement Plan v. Oxford Health Plans, Inc., et al., 97 CV 02325 (D. Ct.) (hereinafter "Oxford Health").

24. As required by the Private Securities Litigation Reform Act of 1995 (hereinafter "the Reform Act"), which became effective on December 22, 1995, the New York Law Firm prepared a declaration, described more fully below, to be executed by VOGEL on behalf of HVRP under penalty of perjury (hereinafter the "Oxford Health Reform Act Declaration"). VOGEL signed the Oxford Health Reform Act Declaration at the offices of the New York Law Firm on or about October 31, 1997. The New York Law Firm filed the Oxford Health Reform Act Declaration with its complaint.

25. In the Oxford Health Reform Act Declaration, VOGEL declared on behalf of HVRP under penalty of perjury, among other things, the following:

> "2. Plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.
>
> * * *
>
> 6. Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court."

26. In truth and in fact, as VOGEL well knew, the Oxford Health Reform Act Declaration was false and perjurious, in that: (a) VOGEL caused HVRP to purchase the securities of OHP to participate as a plaintiff in a federal securities class action for the New York Law Firm; and (b) VOGEL intended to receive and accept payment from the New York Law Firm of a percentage of its attorneys' fees in Oxford Health for having HVRP serve as a representative party on behalf of the class. Moreover, VOGEL expected the amount of his share of these fees in Oxford Health to far exceed HVRP's pro rata share of any recovery by the class..

27. VOGEL knew that the false statements set forth in the Oxford Health Reform Act Declaration were material to the Oxford Health class action. VOGEL knew that his sworn certification on behalf of HVRP was required under the Reform Act to be filed with the court to assist the court in determining whether HVRP and the New York Law Firm would fairly and adequately represent the interests of the members of the proposed class and that it would be material to the court for these purposes to learn that: (a) HVRP's purchase of OHP stock was caused by VOGEL in order for VOGEL to participate in the Oxford Health class action; and (b) VOGEL had arranged with the New York Law Firm to obtain a share of the firm's attorneys' fees received in Oxford Health. VOGEL knew that these facts reflected negatively on the abilities of VOGEL, acting as sole trustee of HVRP, and the New York Law Firm to fairly and adequately represent the class. VOGEL knew that disclosure of these facts to the Oxford Health court could cause the court, among other things, to disapprove HVRP as a representative plaintiff; to disapprove the New York Law Firm as class counsel; and to disallow any attorneys' fees requested by the New York Law Firm.

28. Sometime in 1999, Partner E told VOGEL that he was leaving the New York Law

Firm, and that VOGEL's payment arrangements would thereafter be handled by Partner D.

29. On or about June 27, 2003, the New York Law Firm obtained approximately $40 million of the attorneys' fees awarded in Oxford Health. In or about September 2003, VOGEL contacted Partner D to negotiate his payment for having HVRP serve as a representative plaintiff in Oxford Health. VOGEL also wanted to negotiate his payment for having arranged for his stepson to serve as a representative plaintiff in a class action that had been brought by the New York Law Firm against the Baan Company, Gladstone, et al. v. Baan Co. N.V., et al., No. 98-CV-2465-ESH (D.D.C.) (hereinafter "Baan"), in connection with which the New York Law Firm had obtained approximately $2.4 million in attorneys' fees. Partner D instructed VOGEL to have an intermediary lawyer contact another partner in the New York Law Firm (hereinafter referred to as "Partner A") to finalize the terms of VOGEL's payments in connection with Oxford Health and Baan.

30. On or about September 20, 2003, VOGEL sent Partner D a memorandum confirming their discussions concerning VOGEL's payment. In that memorandum, VOGEL wrote in relevant part:

> "As we discussed, enclosed is material from 1997/1998 relating to my role as initiating plaintiff in the Oxford and Baan cases. My dealings with [the New York Law Firm] in those years centered around [Partner E].
>
> My attorney, who previously represented me in the two Valero cases (working with [Partner E]) is [Vogel Intermediary A] . . . .
>
> [Vogel Intermediary A] will call [secretary of Partner A] to arrange a call with [Partner A] to discuss the Oxford case only."

On or about October 15, 2003, VOGEL sent to the secretary of Partner A by means of interstate private carrier, a copy of this memorandum, annotated to indicate that the discussion with Partner

A would also include Baan.

31. VOGEL was told by Partner D and Vogel Intermediary A that Partner A refused to engage in substantive discussions with Vogel Intermediary A over the telephone, but instead insisted on meeting with Vogel Intermediary A in person in New York to discuss VOGEL's payments in Oxford Health and Baan. Accordingly, VOGEL requested that Vogel Intermediary A travel to New York to meet with Partner A at the offices of the New York Law Firm.

32. On or about November 10, 2003, Vogel Intermediary A met with Partner A at the offices of the New York Law Firm in New York, New York, in order to negotiate VOGEL's payments for his role as initiating plaintiff in Oxford Health and Baan. As later communicated to VOGEL by Vogel Intermediary A, during that meeting Partner A reaffirmed that the New York Law Firm would pay VOGEL a percentage of its attorneys' fees obtained in connection with the Oxford Health and Baan class action cases.

33. On or about December 18, 2003, the New York Law Firm sent a check in the amount of $1.1 million to Vogel Intermediary A, accompanied by a cover letter signed by Partner D, which stated: "Enclosed please find a check in the amount of $1,100,000.00, reflecting your share of court ordered attorneys' fees in consideration of your work, services and joint representation of our clients in connection with [Oxford Health]." The cover letter to Vogel Intermediary A was false in that Vogel Intermediary A did no "work," performed no "services," and did not jointly represent VOGEL or HVRP in connection with Oxford Health. Rather, the New York Law Firm was paying VOGEL, through Vogel Intermediary A, for VOGEL's causing HVRP to serve as initiating plaintiff in Oxford Health.

34. On or about December 18, 2003, the New York Law Firm also sent a check in the

amount of $120,000 to Vogel Intermediary A, accompanied by a cover letter, signed by Partner D, which stated: "Enclosed please find a check in the amount of $120,000.00, reflecting your share of court ordered attorneys' fees in consideration of your work, services and joint representation of our clients in connection with [Baan]." The cover letter to Vogel Intermediary A was false in that Vogel Intermediary A did no work, performed no services, and did not jointly represent VOGEL, VOGEL's stepson (whom Vogel Intermediary A had never met), or any other clients in connection with Baan. Rather, the New York Law Firm was paying VOGEL, through Vogel Intermediary A, for VOGEL's role in securing his stepson to be a named plaintiff in Baan. (VOGEL never disclosed to his stepson VOGEL's kickback arrangement with the New York Law Firm and never shared with his stepson any kickback proceeds).

35. On or about January 8, 2004, Vogel Intermediary A caused a wire transfer in the amount of $1,205,932.37 to be sent to a bank account in the name of "Northern Cavalier Corporation," which VOGEL had established for the purpose of concealing monies received from the New York Law Firm.

Other VOGEL False *Reform Act* Declarations

36. In addition to the false Oxford Health Reform Act Declaration described above, VOGEL falsely subscribed, under penalty of perjury, to declarations in other federal securities fraud class action lawsuits which concealed his improper payment arrangement with the New York Law Firm. For example, on or about April 9, 2003, the New York Law Firm filed a federal securities fraud class action against CIT Group, Inc., with VOGEL as a plaintiff, in the United States District Court for the Southern District of New York. Howard Vogel v. CIT Group Inc., et al., 03-CV-2471 (S.D.N.Y.) (hereinafter "CIT"). As required by the Reform Act, the New York

Law Firm submitted a declaration to the court, executed by VOGEL on April 9, 2003, in connection with the filing of the complaint (hereinafter "CIT Reform Act Declaration"). In his CIT Reform Act Declaration, VOGEL falsely declared, under penalty of perjury that "Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court." In truth and in fact, as VOGEL well knew, VOGEL's CIT Reform Act Declaration was false and perjurious, in that VOGEL would accept payment from the New York Law Firm of a percentage of its legal fees for serving as a representative party on behalf of the class.

37. Further, on or about May 28, 2004, the New York Law Firm filed a federal securities fraud class action against the Bisys Group, Inc., with VOGEL as a plaintiff, in the United States District Court for the Southern District of New York. Howard Vogel v. The Bisys Group, Inc., et al., 04-CV-4048 (S.D.N.Y.) (hereinafter "Bisys Group"). The New York Law Firm submitted a declaration to the court, executed by VOGEL on May 24, 2004, in connection with the filing of the complaint (hereinafter "Bisys Reform Act Declaration"). In his Bisys Reform Act Declaration, VOGEL declared under penalty of perjury that "I did not acquire the BISYS Group, Inc. . . . stock at the direction of plaintiff's counsel or in order to participate in any private action under the federal securities laws." VOGEL further declared "I will not accept any payment for serving as a representative party beyond my pro rata share of any recovery, except reasonable costs and expenses, such as lost wages and travel expenses, directly related to the class representation, as ordered or approved by the court pursuant to law." In truth and in fact, as VOGEL well knew, VOGEL's Bisys Reform Act Declaration was false and perjurious, in

that: (a) VOGEL did purchase the securities of Bisys to participate as a plaintiff in a federal securities class action for the New York Law Firm; and (b) VOGEL would accept payment from the New York Law Firm of a percentage of its legal fees for serving as a representative party on behalf of the class.

38. On or about July 27, 2004, the New York Law Firm filed a federal securities fraud class action against KVH Industries, Inc., with VOGEL as a plaintiff, in the United States District Court for the District of Rhode Island. Howard Vogel v. KVH Industries, Inc., et al., CA 04-320L (D.R.I.) (hereinafter "KVH"). The New York Law Firm submitted a declaration, executed by VOGEL on July 26, 2004, to the court in connection with the filing of the complaint (hereinafter "KVH Reform Act Declaration"). In his KVH Reform Act Declaration, VOGEL declared under penalty of perjury that "I will not accept any payment for serving as a representative party beyond my pro rata share of any recovery, except reasonable costs and expenses, such as lost wages and travel expenses, directly related to the class representation, as ordered or approved by the court pursuant to law." In truth and in fact, as VOGEL well knew, VOGEL's KVH Reform Act Declaration was false and perjurious, in that VOGEL would accept payment from the New York Law Firm of a percentage of its legal fees for serving as a representative party on behalf of the class.

VOGEL'S Dealings with New York Law Firm Partner D and Other False Declarations

39. Following the departure of Partner E from the New York Law Firm in 1999, Partner D became VOGEL's primary contact with the New York Law Firm. VOGEL discussed with Partner D his payment arrangement with the New York Law Firm, pending and proposed

cases, and the fee shares which VOGEL could expect to receive in connection with his pending cases. Partner D informed VOGEL that VOGEL could not expect to receive 14% of the New York Law Firm's attorneys' fees in future cases. Partner D stated that VOGEL should expect to receive up to 12% of the New York Law Firm's attorneys' fees in future cases. At a later point, VOGEL met with Partner C and Partner D, at which time Partner C reaffirmed that VOGEL could expect to receive up to 12% of the New York Law Firm's attorneys' fees.

40. To VOGEL's understanding, Partner D oversaw the department at the New York Law Firm responsible for initiating or "starting" cases, and had expertise in filing so-called "shareholder lawsuits" in the Court of Chancery in the State of Delaware relating to the acquisition of minority shareholder interests by majority shareholders in publicly traded corporations (hereinafter "Transaction Cases"). In consultation with Partner D and others at the New York Law Firm, VOGEL would purchase stocks in companies in which it was foreseeable that majority shareholders in those companies would seek to acquire, or "buy out," the shares of minority shareholders. At Partner D's directions and with the assistance of VOGEL, attorneys in the "starting" department of the New York Law Firm would prepare complaints, known by them as "shelf complaints," to be available for expeditious filing of Transaction Cases in the Delaware state courts.

41. When Transaction Cases involving VOGEL as named plaintiff were settled, VOGEL subscribed, under oath, to declarations which variously stated that VOGEL did not have any claim or interest adverse to the company or its public shareholders, that VOGEL did not have any conflict of interest of any kind that would preclude him from bringing and prosecuting the action as a class action, and that VOGEL believed that the proposed settlement was fair,

reasonable and adequate. As VOGEL knew, he expected to, and did, share in the attorneys' fees obtained by the New York Law Firm in Transaction Cases. In addition, VOGEL knew that his payment arrangement with the New York Law Firm would be material to the court in evaluating his declarations and the proposed settlements of the Transaction Cases. Notwithstanding the above, VOGEL failed to disclose this conflict of interest to the courts.

42. In 2004, after VOGEL learned that Partner D's status with the New York Law Firm had been substantially elevated, VOGEL congratulated Partner D on his success. Partner D responded that his elevated status at the firm was thanks, in part, to VOGEL.

Summary of Lawsuits

43. In total, between 1991 and 2005, VOGEL served, and caused certain of his family members and associated entities to serve, as representative plaintiffs in approximately forty Vogel Lawsuits. In addition to the cash kickback payment made directly to VOGEL by Partner D on behalf of the New York Law Firm in connection with Mercer, on or about the following dates, pursuant to its agreement with VOGEL, the New York Law Firm made and caused to be made the following payments to VOGEL, through Vogel Intermediary A or Vogel Intermediary B, to compensate VOGEL for serving, or causing his family members or associated entities to serve, as representative plaintiffs in the following Vogel Lawsuits:

Common Case Name, Case Number, and Court	Named Plaintiff(s)	Date of Kickback	Approximate Kickback
Valero Energy Corp., No. 1991 CI 12179 (Bexar, Texas District Court) ("Valero I")	VOGEL and VOGEL's Wife	12/28/92	$ 637,223

Common Case Name, Case Number, and Court	Named Plaintiff(s)	Date of Kickback	Approximate Kickback
In re Valero Natural Gas Partners, L.P. Litigation, No. 13194 (New Castle County, Delaware Chancery Court) ("Valero II")	VOGEL	07/18/94	$ 69,860.89
Guaranty National Corp., No. 0602632/1996 (New York County, New York Supreme Court) ("Guaranty I")	VOGEL's Wife	08/08/97	$ 44,115
Guaranty National Corp., No. 97-5754 (Denver District Court, Denver, Colorado) ("Guaranty II")	VOGEL's Wife	04/27/99	$ 47,160
Santa Fe Pacific Pipeline Partners, No. 785816 (Orange County, California Superior Court)	VOGEL's Wife	04/27/99	$ 10,920
In re: Vastar Resources, Inc., No. 17888 (New Castle County, Delaware Chancery Court)	VOGEL's Wife	12/05/00	$ 94,000
In re Travelers Property Casualty Corp., No. 17902 (New Castle County, Delaware Chancery Court)	VOGEL	05/17/01	$ 140,345.25
Life Technologies, Inc., No. 16519 (New Castle County, Delaware Chancery Court)	VOGEL's Wife	09/05/02	$ 1,044.44
In re Infinity Broadcasting Corp., No. 18219 (New Castle County, Delaware Chancery Court)	VOGEL's Wife	03/17/03	$ 86,923.08
In re Intimate Brands, Inc., No. 02-19382 (New Castle County, Delaware Chancery Court)	VOGEL's Wife	03/17/03	$ 47,745.84
In re Future Healthcare, Inc., No. 95-CV-180-SSB (consolidated with No. 95-180-GLF) (United States District Court, Southern District of Ohio)	VOGEL	03/21/03	$ 68,993.70

Common Case Name, Case Number, and Court	Named Plaintiff(s)	Date of Kickback	Approximate Kickback
In re the Baan Company Securities Litigation, No. 98-CV-2465-ESH (consolidated with No. 98-CV-2465-ESH) (United States District Court, District of Columbia)	VOGEL's Stepson	12/18/03	$ 120,000
In re Oxford Health Plans Inc., No. 97-CV- 2325-AVC (United States District Court, District of Connecticut); transferred to 7:21-MC00076-CLB (United States District Court, Southern District of New York)	VOGEL's HVRP	12/18/03	$1,100,000
In re US Oncology Inc., No. 324-N (New Castle County, Delaware Chancery Court)	VOGEL	01/06/05	$ 11,473.50
		02/16/05	$ 2,294.70
Barnesandnoble.com, Inc., No. 042-N (New Castle County, Delaware Chancery Court)	VOGEL's Wife	05/19/05	$ 10,800.67
TOTAL APPROXIMATE PAYMENTS TO VOGEL:			$2,492,900.07

FILED

2006 APR 28 AM 11:50

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

06-00320

UNITED STATES OF AMERICA,	) No. CR 06-
Plaintiff,	) I N F O R M A T I O N
v.	) [18 U.S.C. § 1623: False Declaration Before Federal Court]
HOWARD J. VOGEL,	)
Defendant.	)

The United States Attorney charges:

COUNT ONE

[18 U.S.C. § 1623]

I.

BACKGROUND

1. At all time relevant to this Information, defendant HOWARD J. VOGEL ("VOGEL") was a resident of Englewood, New Jersey, and the sole trustee of the Howard Vogel Retirement Plan (hereinafter "HVRP").

2. At all times relevant to this Information, the "New York Law Firm" was a law firm headquartered in New York, New York. The New York Law Firm specialized in representing

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plaintiffs in securities fraud class actions and shareholder derivative actions in federal and state courts throughout the United States. Among the plaintiffs represented by the New York Law Firm in such actions were defendant VOGEL, HVRP, and certain of VOGEL's family members.

3. From in or about 1991 through 2005, defendant VOGEL, HVRP, and certain of VOGEL's family members served as named plaintiffs in approximately forty class actions and shareholder derivative actions brought and caused to be brought by the New York Law Firm (hereinafter the "Vogel Lawsuits").

4. Beginning in 1991 and continuing into 2005, defendant VOGEL and the New York Law Firm had an established arrangement and practice that the New York Law Firm would secretly pay defendant VOGEL a percentage of the attorneys' fees that the New York Law Firm obtained in class actions and shareholder derivative actions in which VOGEL, HVRP, or one of Vogel's family members served as a named plaintiff.

5. Pursuant to the Private Securities Litigation Reform Act of 1995 (the "Reform Act"), all securities fraud class action complaints filed in federal court after December 22, 1995 have been required to be accompanied by a certification, signed under penalty of perjury by "[e]ach plaintiff seeking to serve as a representative party on behalf of a class," stating, among other things, that: (a) "the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under [the federal laws prohibiting securities fraud]" and (b) "the plaintiff will not accept any payment for

serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as approved by the court in accordance with [the Reform Act]."

II.

OXFORD HEALTH PLANS SECURITIES LITIGATION

A. Conception of the Lawsuit and Pre-filing Activity

6. Prior to October 1997, defendant VOGEL and the New York Law Firm discussed bringing a securities fraud class action against Oxford Health Plans, Inc. ("OHP") and others. In particular, defendant VOGEL and the New York Law Firm discussed potentially filing a class action complaint in federal court in which defendant VOGEL would seek to serve as a representative plaintiff on behalf of the class of OHP shareholders.

7. On or about October 8, 1997, in order to position HVRP to serve as a named plaintiff in a securities fraud class action against OHP, defendant VOGEL caused HVRP to purchase 50 shares of OHP common stock, at a price of approximately $3,918.75.

B. Vogel's Perjurious Certification and Filing of the Complaint

8. On or about October 31, 1997, the New York Law Firm and defendant VOGEL caused to be filed in the United States District Court for the District of Connecticut a class action complaint against OHP and others for violation of federal securities laws, naming HVRP as plaintiff, captioned Howard Vogel Retirement Plan on behalf of itself and all others similarly situated v. Oxford Health Plans, Inc., et al., No. 97-CV-02325 (D. Conn.) (hereinafter "Oxford Health").

9. Along with the Oxford Health complaint, the New York Law Firm and defendant VOGEL caused to be filed a document

entitled "Certification of Howard Vogel Retirement Plan In Support of Class Action Complaint" (the "Certification"), which was prepared by the New York Law Firm and signed by defendant VOGEL on October 31, 1997 under penalty of perjury in his capacity as sole trustee of HVRP.

10. At the time defendant VOGEL signed the Certification, he knew that the New York Law Firm would submit the Certification to the federal court presiding over Oxford Health, and that the Certification was required under federal law to be filed with the court to assist the court in determining whether HVRP and the New York Law Firm would fairly and adequately represent the interests of the members of the proposed class.

11. At the time he executed the Certification, defendant VOGEL knew it to be materially false because in it he declared, with respect to Oxford Health, as follows:

a. "Plaintiff did not purchase the security that is the subject of the complaint . . . in order to participate in any private action arising under the federal securities law." In truth and fact, as defendant VOGEL then well knew, VOGEL had caused HVRP to purchase the OHP stock in question for that very purpose.

b. "Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court." In truth and fact, as defendant VOGEL then well knew, VOGEL intended to

receive and accept a percentage of the New York Law Firm's attorneys' fees in Oxford Health for causing HVRP to serve as a representative plaintiff, which amount he expected to far exceed HVRP's pro rata share of any recovery by the class.

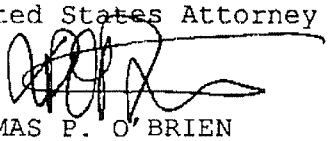
12. Defendant VOGEL knew, at the time he signed the Certification, that it would be material to the court to learn that (a) HVRP's purchase of OHP stock was caused to be made by defendant VOGEL in order for HVRP to participate in the Oxford Health class action, so that defendant VOGEL could share in attorneys' fees obtained by the New York Law Firm in that case; and (b) defendant VOGEL had secretly arranged with the New York Law Firm to obtain a share of the firm's attorneys' fees received in Oxford Heath, because such facts reflected negatively on the abilities of defendant VOGEL, acting as sole trustee of HVRP, and the New York Law Firm to fairly and adequately represent the class in Oxford Health. Defendant VOGEL knew that disclosure of these facts to the court could potentially cause the court to exclude HVRP, as well as the New York Law Firm, from participation in Oxford Health and eliminate their prospect of sharing in any attorneys' fees award in that class action. During the course of Oxford Health, defendant VOGEL concealed these facts and the falsity of the Certification from the court.

C. Award of Attorneys' Fees and Kickback Payment to Vogel

13. On or about June 27, 2003, the New York Law Firm obtained approximately $40 million of attorneys' fees awarded by the court in Oxford Health. On or about December 18, 2003, the New York Law Firm secretly paid to defendant VOGEL $1.1 million,

through an intermediary attorney in Denver, Colorado selected by defendant VOGEL (hereinafter "Vogel Intermediary A"). The payment was made through Vogel Intermediary A, rather than directly to defendant VOGEL, to conceal defendant VOGEL's fee-sharing arrangement with the New York Law Firm.

DEBRA WONG YANG
United States Attorney



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Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. HOWARD J. VOGEL, Defendant.	No. CR 06-00320 PLEA AGREEMENT FOR DEFENDANT HOWARD J. VOGEL

1. This constitutes the plea agreement between HOWARD J. VOGEL ("defendant"), on the one hand, and the United States Attorney's Office for the Central District of California, on the other hand (the "USAO"). This agreement is limited to the USAO and cannot bind any other federal, state, or local prosecuting, administrative or regulatory authorities.

PLEA

2. Defendant gives up the right to indictment by a grand

jury and agrees to plead guilty to a one-count information in the form attached to this agreement or a substantially similar form. The information charges defendant with false declaration before a court, in violation of Title 18, United States Code, Section 1623(a).

NATURE OF THE OFFENSE

3. In order for defendant to be guilty of count one of the information, which charges a violation of Title 18, United States Code, Section 1623(a), the following must be true:

(a) defendant made a declaration under penalty of perjury to a federal court;

(b) defendant's declaration was false; and

(c) defendant knew that his declaration was false and material to proceedings before the court.

4. Defendant admits that defendant is, in fact, guilty of this offense, as described in count one of the information.

PENALTIES

5. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1623(a), is five-years imprisonment; a three-year period of supervised release; a fine of $250,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of $100.

6. Supervised release is a period of time following imprisonment during which defendant will be subject to various restrictions and requirements. Defendant understands that if defendant violates one or more of the conditions of any supervised release imposed, defendant may be returned to prison

for all or part of the term of supervised release, which could result in defendant serving a total term of imprisonment greater than the statutory maximum stated above.

7. Defendant also understands that, by pleading guilty, defendant may be giving up valuable government benefits and valuable civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury.

8. Defendant further understands that the conviction in this case may subject defendant to various collateral consequences, including but not limited to, suspension or revocation of a professional license. Defendant understands that unanticipated collateral consequences will not serve as grounds to withdraw defendant's plea of guilty.

FACTUAL BASIS

9. Defendant and the USAO agree and stipulate to the statement of facts set forth in Exhibit A hereto. This statement of facts includes facts sufficient to support a plea of guilty to the charge described in this agreement, and to establish the sentencing guideline factors set forth in paragraphs 13-14. It is not meant to be a complete recitation of all facts relevant to the underlying criminal conduct or all facts known to defendant that relate to that conduct.

WAIVER OF CONSTITUTIONAL AND OTHER RIGHTS

10. By pleading guilty, defendant gives up the following rights:

(a) The right to persist in a plea of not guilty.

(b) The right to a speedy and public trial by jury.

(c) The right to the assistance of legal counsel at trial, including the right to have the Court appoint counsel for defendant for the purpose of representation at trial. (In this regard, defendant understands that, despite his plea of guilty, he retains the right to be represented by counsel - and, if necessary, to have the Court appoint counsel if defendant cannot afford counsel - at every other stage of the proceedings.)

(d) The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

(e) The right to confront and cross-examine witnesses against defendant.

(f) The right, if defendant wished, to testify on defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

(g) The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

11. By pleading guilty, defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that could be filed on his behalf, including assertion of any statute of limitations defense or objection to venue in the Central District of California.

SENTENCING FACTORS

12. Defendant understands that the Court is required to consider the United States Sentencing Guidelines ("U.S.S.G." or

"Sentencing Guidelines") among other factors in determining defendant's sentence. Defendant understands that the Sentencing Guidelines are only advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise its discretion to impose any reasonable sentence up to the maximum set by statute for the crime of conviction.

13. Defendant and the USAO agree that the Court should consider the 1995 Guidelines Manual because this version was in effect at the time defendant committed the offense charged in the information. Defendant agrees that consideration of the 1995 Guidelines Manual does not violate the ex post facto clause, and defendant waives any claim that any other Guidelines Manual version should be considered instead of, or in addition to, the 1995 Guidelines Manual.

14. Defendant and the USAO agree and stipulate to the following applicable sentencing guideline factors:

Base Offense Level:	12	[U.S.S.G. § 2J1.3(a)]
Specific Offense Characteristics		
Substantial interference with admin. of justice:	3	[U.S.S.G. § 2J1.3(b)(2)]
Abuse of position of trust:	2	[U.S.S.G. § 3B1.3]
Acceptance of responsibility:	-3	[U.S.S.G. § 3E1.1]
Total Offense Level	14	

The USAO will agree to a downward adjustment for acceptance of responsibility only if the conditions set forth in paragraph 23(b) are met. Subject to paragraphs 17 and 19, defendant and

the USAO agree not to seek, argue, or suggest in any way, either orally or in writing, that any other specific offense characteristics, adjustments or departures, from either the applicable Offense Level or Criminal History Category, be imposed. If, however, after signing this agreement but prior to sentencing, defendant were to commit an act, or the USAO were to discover a previously undiscovered act committed by defendant prior to signing this agreement, which act, in the judgment of the USAO, constituted obstruction of justice within the meaning of U.S.S.G. § 3C1.1, the USAO would be free to seek the enhancement set forth in that section.

15. The USAO, in its exclusive judgment and under the terms set forth in paragraph 23(h) below, may move the Court to impose a sentence below the sentencing range dictated by the Sentencing Guidelines pursuant to U.S.S.G. § 5K1.1.

16. There is no agreement as to defendant's criminal history or criminal history category.

17. The stipulations in this agreement do not bind either the United States Probation Office or the Court. Both defendant and the USAO are free to:

(a) Supplement the facts by supplying relevant information to the United States Probation Office and the Court;

(b) Correct any and all factual misstatements relating to the calculation of the sentence; and

(c) Argue on appeal and collateral review that the Court's sentencing guidelines calculations are not error, although each party agrees to maintain its view that the calculations in paragraphs 13-16 are consistent with the facts of

this case.

DEFENDANT'S OBLIGATIONS

18. Defendant agrees that he will:

(a) Plead guilty as set forth in this agreement.

(b) Not knowingly and willfully fail to abide by all sentencing stipulations contained in this agreement.

(c) Not knowingly and willfully fail to: (i) appear as ordered for all court appearances, (ii) surrender as ordered for service of sentence, (iii) obey all conditions of any bond, and (iv) obey any other ongoing court order in this matter.

(d) Not commit any crime; however, offenses which would be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are not within the scope of this agreement.

(e) Not knowingly and willfully fail to be truthful at all times with Pretrial Services, the United States Probation Office, and the Court.

(f) Pay the applicable special assessment at or before the time of sentencing.

19. Defendant further agrees to cooperate fully with the USAO, the Internal Revenue Service, the Postal Inspection Service and, as directed by the USAO, with any other federal, state, or local law enforcement agency with respect to any investigations or criminal, civil, disciplinary or other proceedings relating to any payment made directly or indirectly to any named plaintiff in any class action or shareholder derivative lawsuit brought by the law firm of Milberg Weiss Bershad & Schulman LLP ("Milberg Weiss"). As used in this agreement, "cooperation" requires defendant to:

(a) Respond truthfully and completely to all questions that may be put to defendant, whether in interviews, before a grand jury, or at any trial or other court proceeding.

(b) Attend all interviews, meetings, grand jury sessions, trials or other proceedings at which defendant's presence is requested by the USAO or compelled by subpoena or court order.

(c) Produce voluntarily all documents, records, or other tangible evidence relating to matters about which the USAO, or its designee, inquires.

(d) Authorize the disclosure and release by any third parties of any and all client papers and property, documents, records, or other tangible evidence relating to his cooperation, and to sign waivers of any attorney client confidential communications privilege, work product privilege, or other privilege to facilitate the foregoing. The privilege waivers do not extend, however, to any privilege between defendant and his counsel, the law firm of Miller & Chevalier.

(e) Not act undercover, tape record any conversations, or gather any evidence unless expressly instructed or authorized to do so in writing by federal, state, or local law enforcement authorities.

20. Nothing in this agreement requires the USAO, or any other agency, to accept any cooperation or assistance that defendant may offer. The decision as to whether and how to use any information or cooperation defendant provides (if at all) is in the exclusive discretion of the USAO.

21. Defendant further agrees to pay $2,000,000 to the

United States in two installments, which defendant agrees shall be civilly forfeited, administratively or judicially (at the sole election of the United States), pursuant to 18 U.S.C. § 981(a)(1)(A) (the "Forfeitable Currency"). Defendant further agrees:

(a) To deliver the first installment of Forfeitable Currency, in the sum of $630,000, to Assistant United States Attorney Pio Kim, Asset Forfeiture Section, 1400 United States Courthouse, 312 N. Spring Street, Los Angeles, CA, 90012 ("AUSA Kim"), on or before the tenth business day after the date defendant's plea is accepted by the court, in the form of a cashiers' check payable to "United States Marshals Service";

(b) To deliver the second installment of the Forfeitable Currency, in the sum of $1,370,000, to AUSA Kim, on or before January 8, 2007, in the form of a cashiers' check payable to "United States Marshals Service";

(1) To provide a satisfactory guarantee of the availability of the funds described in paragraph 21(b) to the USAO on or before the tenth business day after the date defendant's plea is accepted by the court.

(A) To provide timely notice to the USAO in the event that defendant's financial condition changes in any material manner with regard to his ability to deliver the funds described in paragraph 21(b). This obligation is not dependent upon request from the USAO and is a continuing obligation of defendant through such time as the total sum of $2,000,000 is delivered to AUSA Kim.

(c) That the Forfeitable Currency was involved in

transactions or attempted transactions in violation of 18 U.S.C. § 1956, or is property traceable to such property;

(d) Not to file a claim or statement of interest to contest the forfeiture of the Forfeitable Currency in any administrative or judicial proceeding;

(e) To waive all constitutional and statutory challenges to forfeiture of the Forfeitable Currency on any grounds, including that the forfeiture constitutes an excessive fine or punishment;

(f) To take all steps as requested by the United States that are necessary to pass to the United States clear title to the Forfeitable Currency, including, without limitation, the execution of a consent decree of forfeiture and the completing of any other legal documents required for the transfer of title to the United States;

(g) Not to assist any other person in any effort falsely to contest the forfeiture of the Forfeitable Currency; and

(h) That forfeiture of the Forfeitable Currency shall not be counted toward satisfaction of any special assessment, fine, restitution, or any other penalty the Court may impose, nor shall it be counted toward satisfaction of any taxes, penalties, or interest owed to the Internal Revenue Service.

22. Defendant agrees to cooperate with the Internal Revenue Service ("IRS") in the determination of defendant's tax liability for his personal returns for tax years 2003 through 2005, as well as the tax liability of Northern Cavalier Corporation ("NCC"), of which defendant is the 100% owner and responsible corporate

officer, for tax years 2003 and 2004. Defendant agrees:

(a) That defendant will file, and cause NCC to file, prior to the time of sentencing, initial or amended returns for the years specified correctly reporting unreported income and correcting improper deductions and credits, and will, if requested to do so by the IRS, provide the IRS with information regarding the tax years covered by the returns, and will pay by the time of sentencing all additional taxes, and will pay promptly all penalties and interest assessed by the IRS to be owing as a result of any computational error(s).

(b) That nothing in this agreement forecloses or limits the ability of the IRS to examine and make adjustments to defendant's personal returns and NCC's returns after they are filed.

(c) That defendant will not, after filing the returns, file, or cause NCC to file, any claim for refund of taxes, penalties, or interest for amounts attributable to the returns filed in connection with this plea agreement.

(d) That defendant is liable for the fraud penalty imposed by the Internal Revenue Code, 26 U.S.C. § 6663, as against the total amount of tax underpaid on income received by defendant in 2004 and underreported on his personal 2004 income tax return and NCC's 2003 corporate tax return for the period beginning October 14, 2003 and ending September 30, 2004.

(e) To give up, on behalf of himself and NCC, any and all objections that could be asserted to the Examination Division of the IRS receiving materials or information obtained during the criminal investigation of this matter, including materials and

information obtained through grand jury subpoenas.

THE USAO'S OBLIGATIONS

23. If defendant complies fully with all defendant's obligations under this agreement, the USAO agrees:

(a) To abide by all sentencing stipulations contained in this agreement.

(b) At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility for the offenses up to and including the time of sentencing, to recommend a two-level reduction in the applicable sentencing guideline offense level, pursuant to U.S.S.G. § 3E1.1, and to recommend an additional one-level reduction if available under that section.

(c) Not to offer as evidence in its case-in-chief in the above-captioned case or in any other prosecution that may be brought against defendant by the USAO, any statements made by defendant or documents, records, or tangible evidence provided by defendant pursuant to defendant's cooperation provided pursuant to this agreement and pursuant to the letter agreement between defendant and the USAO dated November 22, 2005 and signed by defendant on March 2, 2006 (the "Letter Agreement"). Defendant, however, agrees that the USAO may use such statements, documents, records, and tangible evidence: (1) to obtain and pursue leads to other evidence, which evidence may be used for any purpose, including any prosecution of defendant; (2) to cross-examine defendant should defendant testify, or to rebut any evidence, argument or representations made by defendant or a witness called by defendant in any trial, sentencing hearing, or other court proceeding; (3) in any prosecution of defendant for false

statement, obstruction of justice, or perjury; and (4) at defendant's sentencing. Defendant understands that information provided by defendant pursuant to this agreement will be disclosed to the probation office and the Court.

(d) Not to further prosecute defendant for violations of federal law arising out of defendant's conduct described in the stipulate facts set forth in Exhibit A hereto.

(e) To provide to defendant written confirmation by the Department of Justice Tax Division that it will not seek to prosecute, nor authorize the prosecution of, defendant for any criminal tax violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371) arising out of payments defendant received, directly or indirectly, from a certain New York law firm in 2003 and 2004, as more particularly described in Exhibit A hereto.

(f) Defendant understands and agrees that the USAO is free to prosecute defendant for any other unlawful past conduct not specifically exempted by this agreement or any illegal conduct that occurs after the date of this agreement. Defendant agrees that at the time of sentencing the Court may consider the uncharged conduct in determining the applicable Sentencing Guidelines range, where the sentence should fall within that range, the propriety and extent of any departure from that range, and the determination of the sentence to be imposed after consideration of the sentencing guidelines and all other relevant factors.

(g) If requested by the defendant or his counsel, to bring to the Court's attention the nature and extent of

defendant's cooperation, in connection with his sentencing.

(h) If the USAO determines, in its exclusive judgment, that defendant has both complied with his obligations under paragraphs 18, 19, 21, and 22 above and provided substantial assistance to law enforcement in the prosecution or investigation of another ("substantial assistance"), to move the Court pursuant to U.S.S.G. § 5K1.1 to fix an offense level and corresponding guideline range below that otherwise advised by the sentencing guidelines, and to recommend a sentence within this reduced range.

(i) To recommend that defendant be sentenced to the low-end of defendant's applicable sentencing guideline range.

(j) To recommend that defendant not be ordered to pay a fine amount higher than the low end of defendant's applicable guideline fine range.

DEFENDANT'S UNDERSTANDINGS REGARDING SUBSTANTIAL ASSISTANCE

24. Defendant understands the following:

(a) Any knowingly false or misleading statement by defendant will subject defendant to prosecution for false statement, obstruction of justice, and perjury and will constitute a breach by defendant of this agreement.

(b) Nothing in this agreement requires the USAO or any other prosecuting or law enforcement agency to accept any cooperation or assistance that defendant may offer, or to use it in any particular way.

(c) Defendant cannot withdraw defendant's guilty plea if the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1 for a reduced sentence or if the USAO make such a motion and the

Court does not grant it or if the Court grants such a motion by the USAO but elects to sentence above the reduced range.

(d) At this time the USAO makes no agreement or representation as to whether any cooperation that defendant has provided or intends to provide constitutes substantial assistance. The decision whether defendant has provided substantial assistance rests solely within the discretion of the USAO.

(e) The USAO's determination of whether defendant has provided substantial assistance will not depend in any way on whether the government prevails at any trial or court hearing in which defendant testifies.

BREACH OF AGREEMENT

25. If defendant, at any time between the execution of this agreement and the completion of defendant's cooperation pursuant to this agreement or defendant's sentencing on a non-custodial sentence or surrender for service of a custodial sentence, whichever is later, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the USAO may declare this agreement breached. If the USAO declares the agreement breached, and the Court finds such a breach to have occurred, defendant will not be able to withdraw defendant's guilty plea, and the USAO will be relieved of all its obligations under this agreement. In particular:

(a) The USAO will no longer be bound by any agreements concerning sentencing and will be free to seek any sentence up to the statutory maximum for the crime to which defendant has pleaded guilty.

(b) The USAO will no longer be bound by any agreements regarding criminal prosecution, and will be free to prosecute defendant for any crime, including charges that the USAO would otherwise have been obligated not to prosecute pursuant to this agreement.

(c) The USAO will be free to prosecute defendant for false statement, obstruction of justice, and perjury based on any knowingly false or misleading statement by defendant.

(d) The USAO will no longer be bound by any agreement regarding the use of statements, documents, records, tangible evidence, or information provided by defendant, and will be free to use any of those in any way in any investigation, prosecution, or civil or administrative action. Defendant will not be able to assert either (1) that those statements, documents, records, tangible evidence, or information were obtained in violation of the Fifth Amendment privilege against compelled self-incrimination, or (2) any claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements, documents, records, tangible evidence, or information provided by defendant before or after the signing of this agreement, or any leads derived therefrom, should be inadmissible.

26. Following a knowing and willful breach of this agreement by defendant, should the USAO elect to pursue any charge that was not filed as a result of this agreement, then:

(a) Defendant agrees that any applicable statute of limitations is tolled between the date of defendant's signing of

this agreement and the commencement of any such prosecution or action.

(b) Defendant gives up all defenses based on the statute of limitations, any claim of preindictment delay, or any speedy trial claim with respect to any such prosecution, except to the extent that such defenses existed as of the date of defendant's signing of this agreement.

LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

27. Defendant gives up the right to appeal any sentence imposed by the Court and the manner in which the sentence is determined, provided that (a) the sentence is within the statutory maximum specified above and is constitutional, (b) the Court in determining the applicable guideline range does not depart upward in offense level or criminal history category, determines that the total offense level is 14 or below prior to any departure pursuant to U.S.S.G. § 5K1.1, and (c) the Court imposes a sentence within or below the range corresponding to the determined total offense level and criminal history category. Defendant also gives up any right to bring a post-conviction collateral attack on the conviction or sentence, except a post-conviction collateral attack based on a claim of ineffective assistance of counsel, a claim of newly discovered evidence, or an explicitly retroactive change in the applicable Sentencing Guidelines, sentencing statutes, or statutes of conviction. Notwithstanding the foregoing, defendant retains the ability to appeal any judgment that requires defendant to (1) pay restitution; or (2) pay a fine greater than the low end of defendant's applicable guideline fine range. Defendant also

retains the ability to appeal the conditions of supervised release imposed by the Court, with the exception of the following: standard conditions set forth in district court General Orders 318 and 01-05; and the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(b)(7).

28. The USAO gives up its right to appeal the Court's Sentencing Guidelines calculations, provided that (a) the Court in determining the applicable guideline range does not depart downward in offense level or criminal history category (except by a downward departure in offense level pursuant to, and to the extent requested by, the USAO in a motion under U.S.S.G. § 5K1.1), (b) the Court determines that the total offense level is 14 or above prior to any departure under U.S.S.G. § 5K1.1, and (c) the Court imposes a sentence within or above the range corresponding to the determined offense level (after any downward departure under U.S.S.G. § 5K1.1) and criminal history category.

COURT NOT A PARTY

29. The Court is not a party to this agreement and need not accept any of the USAO's sentencing recommendations or the parties' stipulations. Even if the Court ignores any sentencing recommendation, finds facts or reaches conclusions different from any stipulation, and/or imposes any sentence up to the maximum established by statute, defendant cannot, for that reason, withdraw defendant's guilty plea, and defendant will remain bound to fulfill all defendant's obligations under this agreement. No one -- not the prosecutor, defendant's attorney, or the Court -- can make a binding prediction or promise regarding the sentence defendant will receive, except that it will be within the

statutory maximum.

30. This agreement applies only to crimes committed by defendant, has no effect on any proceedings against defendant not expressly mentioned herein, and shall not preclude any past, present, or future forfeiture actions.

NO ADDITIONAL AGREEMENTS

31. Except as set forth herein, there are no promises, understandings or agreements between the USAO and defendant or defendant's counsel. This agreement supersedes and replaces the Letter Agreement. Nor may any additional agreement, understanding or condition be entered into unless in a writing signed by all parties or on the record in court.

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

32. The parties agree and stipulate that this agreement will be considered part of the record of defendant's guilty plea hearing as if this entire agreement had been read into the record of such proceedings.

This agreement is effective upon signature by defendant and

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an Assistant United States Attorney.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

DEBRA WONG YANG
United States Attorney

THOMAS P. O'BRIEN
Assistant United States Attorney
Chief, Criminal Division
DOUGLAS A. AXEL
Deputy Chief, Major Frauds Section

RICHARD E. ROBINSON — Date 4/27/06
ROBERT J. MCGAHAN
Assistant United States Attorneys

I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

HOWARD J. VOGEL — Date 4/27/06
Defendant

I am HOWARD J. VOGEL'S attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of

entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

4-27-06

MARK J. ROCHON
Miller & Chevalier
Counsel for Defendant
HOWARD J. VOGEL

Date