

1 ROBERT S. MUELLER, III (CSBN 59775)
United States Attorney

2 DAVID W. SHAPIRO (NYSB)
3 Chief, Criminal Division

4 LESLIE R. CALDWELL (NYSB)
5 Chief, Securities Fraud Section

6 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
7 Telephone: (415) 436-6778

8 Attorneys for Plaintiff

FILED

MAY 16 2000

RICHARD J. ...
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SEALED
BY COURT ORDER

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 UNITED STATES OF AMERICA,)

14 Plaintiff,)

15 v.)

16 DOMINICK DEROSA,)

17 Defendant.)

No. CR 00-0213 MJJ

PLEA AGREEMENT

18
19 I, DOMINICK DEROSA and the United States Attorney's Office for the Northern District
20 of California (hereafter "the government") enter into this plea agreement (the "Agreement")
21 pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to waive indictment and plead guilty to a one count information charging
24 me with aiding and abetting securities fraud, in violation of 18 U.S.C. § 2, 15 U.S.C. § 78j and
25 78ff, and 17 C.F.R. §240.10b-5. I agree that the elements of the offense and the maximum
26 penalties are as follows:

27 Elements

28 a. Defendant aided and abetted others in:

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1 (a) Engaging in acts, practices and a course of business which operated and would
2 operate as a fraud or deceit upon any person;

3 (b) Which was carried out by use of any means or instrumentality of interstate commerce,
4 the mails or any national securities exchange;

5 (c) And which was in connection with the purchase or sale of securities, namely, the
6 stock of HBO & Company.

7 Penalties

- | | | | |
|----|----|---------------------------------|--------------------------|
| 8 | a. | Maximum prison sentence | 10 years |
| 9 | b. | Maximum fine | \$1,000,000 |
| 10 | c. | Maximum supervised release term | three years |
| 11 | d. | Mandatory special assessment | \$100 |
| 12 | e. | Restitution | to be fixed by the Court |

13 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that
14 the following facts are true:

15 (a) From July 1996 until September 1998, I was employed as Senior Vice President,
16 Enterprise Sales, at HBO & Company ("HBOC"), a health care information technology company
17 which was headquartered in Atlanta, Georgia. On January 12, 1999, HBOC merged with
18 McKesson Corp. to form McKessonHBOC. McKessonHBOC is headquartered in San
19 Francisco, California.

20 (b) Both HBOC and McKessonHBOC were publicly traded companies, and both were
21 required to make periodic and other financial filings with the United States Securities and
22 Exchange Commission ("SEC"). Management of HBOC also regularly made public
23 announcements to Wall Street analysts and others about the company's financial performance.

24 (c) While I was Senior Vice President, Enterprise Sales, I participated in improper sales
25 practices that I knew were designed to artificially inflate company revenues. The two principal
26 improper sales practices in which I participated were (i) the use of "side letters" to induce
27 customers to enter into contracts with HBOC, and (ii) the backdating of contracts and shipping
28 documents to make it appear that contracts had been finalized in an earlier reporting period.

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1 (d) I participated with others in the use of "side letters" as a tool to induce customers
2 to enter into contracts with HBOC so that the company could generate additional revenues prior
3 to the close of a quarterly reporting period. Those side letters amended one or more contract
4 terms in a way that made the actual terms of the agreement more favorable to the customer than
5 the terms reflected in the contract itself.

6 (e) Different types of side letters were used by me and others at HBOC. Some side
7 letters made the customer's obligation to perform the contract contingent on the occurrence of a
8 future event, such as approval of the contract by the customer's board of directors, or obtaining
9 financing. Other side letters expressly modified the contract terms in ways that were favorable
10 to the customer, by providing discounted payment terms, a right to return the product, or other
11 terms.

12 (f) HBOC's in-house accounting department was involved in deciding whether the
13 company could book revenue on particular sales contracts. I knew that the use of side letters
14 affected the company's ability to recognize revenue on a contract.

15 (g) In order to help ensure that revenue would be booked on contracts despite the
16 existence of side letters, side letters were not submitted to the accounting department with the
17 sales contracts. Rather, copies of most side letters were forwarded to me. I kept the side letters
18 in a drawer in my desk.

19 (h) I and others also were involved in backdating contracts and HBOC shipping records.
20 I knew that, in order for HBOC to recognize revenue on a software sale, a contract had to be
21 signed and the software shipped before the end of a reporting period. At times, when I learned
22 that contracts were signed after a quarter-end and backdated, I and others altered HBOC shipping
23 records to make it appear that software had shipped in a timely fashion.

24 (i) I knew that HBOC was booking revenue on contracts that were subject to these side
25 letters and backdating, and that HBOC management was aware of these practices. I also knew
26 that HBOC management was publicly reporting these improper revenues, by press releases, SEC
27 filings, and other means, to Wall Street analysts and the investing public.

28 (j) As a result of these practices, HBOC appeared to the public to be a more financially

1 successful and faster-growing company than it actually was.

2 3. I agree to give up all rights that I would have if I chose to proceed to trial,
3 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
4 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
5 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
6 to pursue any affirmative defenses and present evidence.

7 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
8 the Court. I also agree to waive any right I may have to appeal my sentence.

9 5. I agree not to file any collateral attack on my conviction or sentence, including a
10 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim
11 that my constitutional right to the effective assistance of counsel was violated.

12 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
13 entered.

14 7. I agree to pay restitution for all losses caused by the scheme or offenses with
15 which I was charged and agree that the amount of restitution will not be limited to the loss
16 attributable to the count to which I am pleading guilty. I agree that, before or after sentencing, I
17 will, upon request of the Court, the government, or the U.S. Probation Office, provide accurate
18 and complete financial information, release funds and property under my control, submit sworn
19 statements and give depositions under oath concerning my assets and my ability to pay, surrender
20 assets I obtained as a result of my crimes, and make a good faith effort to pay amounts I am
21 ordered to pay as a fine, forfeiture, or restitution. I agree to pay the special assessment at the
22 time of sentencing.

23 8. I agree to cooperate with the U.S. Attorney's Office before and after I am
24 sentenced. My cooperation will include, but will not be limited to, the following:

- 25 a. I will respond truthfully and completely to any and all questions put to me,
26 whether in interviews, before a grand jury or at any trial or other proceeding;
- 27 b. I will provide all documents and other material asked for by the government;
- 28 c. I will testify truthfully at any grand jury, court or other proceeding as requested by
the government;

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- d. I will surrender any and all assets acquired or obtained directly or indirectly as a result of my illegal conduct;
- e. I will request continuances of my sentencing date, as necessary, until my cooperation is completed;
- f. I will tell the government about any contacts I may have with any co-defendants or subjects of investigation, or their attorneys or individuals employed by their attorneys;
- g. I will not reveal my cooperation, or any information related to it, to anyone without prior consent of the government;

9. I agree that the government's decision whether to file a motion pursuant to USSG §5K1.1, as described in the government promises section below, is based on its sole and exclusive decision of whether I have provided substantial assistance and that decision will be binding on me. I understand that the government's decision whether to file such a motion, or the extent of the departure recommended by any motion, will not depend on whether convictions are obtained in any case. I also understand that the Court will not be bound by any recommendation made by the government.

10. I agree not to commit or attempt to commit any crimes before sentence is imposed or before I surrender to serve my sentence; violate the terms of my pretrial release; intentionally provide false information or testimony to the Court, the Probation Office, Pretrial Services, or the government; or fail to comply with any of the other promises I have made in this Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement, then the government will be released from all of its promises, but I will not be released from my guilty plea.

11. If I am prosecuted after failing to comply with any promises I made in this Agreement, then (a) I agree that any statements I made to any law enforcement or other government agency or in Court, whether or not made pursuant to the cooperation provisions of this Agreement, may be used in any way; (b) I waive any and all claims under the United States Constitution, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rules 408 or 410 of the Federal Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my statements, or any leads derived from those statements; and (c) I waive any defense to any

1 prosecution that it is barred by a statute of limitations, if the limitations period has run between
2 the date of this Agreement and the date I am indicted.

3 12. I agree that this Agreement contains all of the promises and agreements between
4 the government and me, and I will not claim otherwise in the future.

5 13. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
6 District of California only, and does not bind any other federal, state, or local agency.

7 The Government's Promises

8 14. The government agrees not to file or seek any additional charges against the
9 defendant that could be filed as a result of the investigation that led to the pending indictment.

10 15. The government agrees not to use any statements made by the defendant pursuant
11 to this Agreement against him, unless the defendant fails to comply with any promises in this
12 agreement.

13 16. If, in its sole and exclusive judgment, the government decides that the defendant
14 has cooperated fully and truthfully, provided substantial assistance to law enforcement authorities
15 within the meaning of U.S.S.G. §5K1.1, and otherwise complied fully with this Agreement, it will
16 file with the Court a motion under §5K1.1 and/or 18 U.S.C. §3553 that explains the nature and
17 extent of the defendant's cooperation and recommends a downward departure.

18 17. Based on the information now known to it, the government will not oppose a
19 downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1.

20 The Defendant's Affirmations

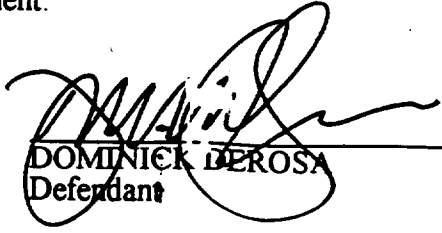
21 18. I confirm that I have had adequate time to discuss this case, the evidence, and this
22 Agreement with my attorney, and that he has provided me with all the legal advice that I
23 requested.

24 19. I confirm that while I considered signing this Agreement and, at the time I signed
25 it, I was not under the influence of any alcohol, drug, or medicine.

26 20. I confirm that my decision to enter a guilty plea is made knowing the charges that
27 have been brought against me, any possible defenses, and the benefits and possible detriments of
28 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one

1 coerced or threatened me to enter into this agreement.

2
3 Dated: 5/15/00


DOMINICK DEROSA
Defendant


ROBERT S. MUELLER, III
United States Attorney

7
8 Dated: 5/15/00


LESLIE R. CALDWELL
Chief, Securities Fraud Section

11 I have fully explained to my client all the rights that a criminal defendant has and all the
12 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
13 and all the rights he is giving up by pleading guilty, and, based on the information now known to
14 me, his decision to plead guilty is knowing and voluntary.

15
16 Dated: 5/15/00


JAMES CAMPBELL, ESQ.
Attorney for Defendant