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8 Attorneys for Plaintiff

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

13 UNITED STATES OF AMERICA,)
14 Plaintiff,)
15 v.)
16 TIMOTHY S. HEYERDAHL,)
17 Defendant.)

No. CR 01-0002 (MJJ)

PLEA AGREEMENT

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

21 The Defendant's Promises

22 1. I agree to waive indictment and plead guilty to a three count information charging
23 me with insider trading, in violation of 15 U.S.C. § 78j(b) and 78ff, and 17 C.F.R. §240.10b-5. I
24 agree that the elements of the offense and the maximum penalties for each count are as follows:

25 Elements

26 a. Defendant was in possession of material nonpublic information about
27 McKessonHBOC;

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- 1 b. Defendant used that material nonpublic information in selling the stock of
2 McKessonHBOC;
- 3 c. The defendant's acts operated and would operate as a fraud or deceit upon any
4 person; and
- 5 d. The defendant's trading was carried out by use of a national securities exchange,
6 namely, the New York Stock Exchange.

7 Penalties for Each Count

- 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) Prior to January 21, 1999, I was employed as the Senior Vice President, Finance &
16 Treasury, of HBO & Company ("HBOC") and the HBOC component of its successor
17 corporation, McKessonHBOC. I was a corporate insider of both companies.

18 (b) While employed by HBOC and McKessonHBOC, I was aware that the company's
19 publicly reported net income, revenue, and growth figures for at least 1997 and 1998 were
20 materially inflated as a result of accounting fraud.

21 (c) On January 12, 1999, McKesson acquired HBOC, creating McKessonHBOC.

22 (d) On January 21, 1999, I resigned my position at McKessonHBOC. As a result, I was
23 able to exercise stock options that I had received during the course of my employment, so that I
24 could then sell all my McKessonHBOC stock. I wanted to sell my stock in part because I was
25 worried that the fraudulent accounting practices might be uncovered by Deloitte & Touche,
26 which would be auditing the combined companies' financial statements for the fiscal year that
27 was to end on March 31, 1999.

28 (e) I knew that if the fraudulent practices were uncovered, they would be made public,

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1 and the price of McKessonHBOC stock would fall.

2 (f) I used my knowledge of material nonpublic information in selling McKessonHBOC
3 stock on three occasions. On January 25, 1999, I sold 7,918 shares of McKessonHBOC stock at
4 \$89/share, earning gross proceeds of \$704,183.62. On January 27, 1999, I sold 1,824 shares of
5 McKessonHBOC stock at \$89.187/share, earning gross proceeds of \$162,533.57. On February
6 12, 1999, I sold another 68,672 shares, which represented all of my remaining McKessonHBOC
7 stock, at \$72.0625/share, and earned gross proceeds of \$4,948,491.

8 (g) On April 28, 1999, McKessonHBOC announced that it had discovered "accounting
9 irregularities" within the former HBOC part of the company. That day, McKessonHBOC's stock
10 price fell from \$65.75 to \$34.50. If I had sold my stock at \$34.50/ share, I would have earned
11 gross proceeds of \$2,705,283. By using my knowledge of material nonpublic information in
12 selling my stock when I did, I earned \$3,109,925.20 more than if I had waited until the
13 information was made public.

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

19 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
20 the Court.

21 5. The parties agree that the offense level should be calculated based on U.S.S.G.
22 §2F1.2, and any applicable adjustments. I agree to waive any right I may have to appeal my
23 sentence, except a sentence that is based on a guideline other than U.S.S.G. §2F1.2 and
24 applicable adjustments.

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

28 7. I agree not to ask the Court to withdraw my guilty plea at any time after it is

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1 entered.

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

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

- 13 a. I will respond truthfully and completely to any and all questions put to me,
14 whether in interviews, before a grand jury or at any trial or other proceeding;
- 15 b. I will provide all documents and other material asked for by the government;
- 16 c. I will testify truthfully at any grand jury, court or other proceeding as requested by
17 the government;
- 18 d. I will surrender any and all assets acquired or obtained directly or indirectly as a
19 result of my illegal conduct;
- 20 e. I will request continuances of my sentencing date, as necessary, until my
21 cooperation is completed;
- 22 f. I will tell the government about any contacts I may have with any co-defendants
23 or subjects of investigation, or their attorneys or individuals employed by their
24 attorneys;
- 25 g. I will not reveal my cooperation, or any information related to it, to anyone
26 without prior consent of the government;

27 10. I agree that the government's decision whether to file a motion pursuant to USSG
28 §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

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1 obtained in any case. I also understand that the Court will not be bound by any recommendation
2 made by the government.

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

10 12. If I am prosecuted after failing to comply with any promises I made in this
11 Agreement, then (a) I agree that any statements I made to any law enforcement or other
12 government agency or in Court, whether or not made pursuant to the cooperation provisions of
13 this Agreement, may be used in any way; (b) I waive any and all claims under the United States
14 Constitution, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rules 408 or 410 of the
15 Federal Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of
16 my statements, or any leads derived from those statements; and (c) I waive any defense to any
17 prosecution that it is barred by a statute of limitations, if the limitations period has run between
18 the date of this Agreement and the date I am indicted.

19 13. I agree that this Agreement contains all of the promises and agreements between
20 the government and me, and I will not claim otherwise in the future.

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

23 The Government's Promises

24 15. The government agrees not to file or seek any additional charges against the
25 defendant that could be filed as a result of the investigation that led to the filing of the pending
26 Information.

27 16. The government agrees not to use any statements made by the defendant pursuant
28 to this Agreement against him, unless the defendant fails to comply with any promises in this

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1 agreement.

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

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

9 The Defendant's Affirmations

10 19. I confirm that I have had adequate time to discuss this case, the evidence, and this
11 Agreement with my attorney, and that he has provided me with all the legal advice that I
12 requested.

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


15 21. I confirm that my decision to enter a guilty plea is made knowing the charges that
16 have been brought against me, any possible defenses, and the benefits and possible detriments of
17 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
18 one coerced or threatened me to enter into this agreement.

19
20 Dated: 1/4/01


TIMOTHY S. HEYERDAHL
Defendant

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22
23 ROBERT S. MUELLER, III
United States Attorney

24
25 Dated: 1/4/01


LESLIE R. CALDWELL
Chief, Securities Fraud Section

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27
28 I have fully explained to my client all the rights that a criminal defendant has and all the

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1 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
2 and all the rights he is giving up by pleading guilty, and, based on the information now known to
3 me, his decision to plead guilty is knowing and voluntary.

4
5 Dated: 1/4/01

Bruce Morris by AEC
BRUCE MORRIS, ESQ.
Attorney for Defendant

6
7 Dated: 1/4/01

Anthony L. Cochran
ANTHONY L. COCHRAN, ESQ.
Attorney for Defendant

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