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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,) No. CR02 -40234 CW
14 Plaintiff,)
15 v.) PLEA AGREEMENT
16 LINDA BRODERICK,)
17 Defendant.)
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19 I, LINDA BRODERICK, and the United States Attorney's Office for the Northern District
20 of California (hereafter "the government") enter into this written plea agreement (the
21 "Agreement") pursuant to Rules 11(c)(1)(C) and of the Federal Rules of Criminal Procedure:
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23 The Defendant's Promises

24 1. I agree to plead guilty to count one of the captioned indictment charging me with
25 conspiracy in violation of 18 U.S.C. §371. I agree that the elements of the offense and the
26 maximum penalties are as follows:

27 **Elements**

28 (1) Beginning at date unknown but no later than and April 4, 2001, and continuing
until on or about June 12, 2002, there was an agreement between two or more persons

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to commit at least one crime as charged in the indictment;

(2) I became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it and;

(3) One of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy.

Penalties

- a. Maximum prison sentence 5 years
- b. Maximum fine \$250,000
- c. Maximum supervised release term 3 years
- d. Mandatory special assessment \$100
- e. Restitution \$400,000

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

Beginning at date unknown but no later than April 4, 2001, and continuing until on or about June 12, 2002, in the Northern District of California and elsewhere, I together with Anthony Davenport, and John Patrick Hay knowingly conspired to commit wire fraud, a violation of Title 18 United States Code Section 1343.

To carry out the conspiracy Anthony Davenport and John Patrick hay did the following:

- A. They made UPC labels, which would fraudulently reflect the following items at the following prices:
 - Price Pfister faucet model # H35-10WV for \$39.97;
 - Delta faucet model #520-WF for \$64.97; and
 - Malibu light model # LV1076T for \$54.97.
- B. They entered Home Depot stores and placed these fraudulent UPC labels on more expensive faucets and lights such as:
 - Price Pfister faucets model # 8B98CMB;
 - Price Pfister faucet model # 8B98PMK;

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Delta faucet model # 3530NP-24NP; and
Malibu light model # CL65315T.

- C. They then purchased these more expensive faucets and lights at the lower prices reflected in the fraudulent UPC labels.
- D. Next, they removed the fraudulent UPC labels we had placed on the expensive faucets and lights, revealing the authentic UPC label for the item.
- E. They then returned the expensive items for the real price, making a profit of the difference between the expensive price indicated on the authentic UPC label and the inexpensive price indicated on the fraudulent UPC label. When returning the expensive items, we received Home Depot store credit cards rather than cash.
- F. They either sold the store credit cards or used the store credit card to make more fraudulent purchases.

In furtherance of the conspiracy, and to effect the object of the conspiracy, on June 13, 2002, they possessed the UPC labels for the following :

- Price Pfister faucet model # H35-10WV – \$39.97;
- Delta faucet model #520-WF -- \$64.97;
- Malibu light model # LV1076T -- \$54.97.

In furtherance of the conspiracy, and to effect the object of the conspiracy, I had a Bank of America bank account in which I deposited over \$125,000 that were proceeds of store credit sold as part of the conspiracy.

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

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

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

4 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
5 entered unless the court declines to accept that 13 is the proper offense level (as set out in
6 paragraph 7 below) in this case. I agree that the government may also withdraw from this
7 agreement if the Court does not accept the agreed upon Guideline calculations set out below in
8 paragraph 7.

9 7. I agree that the Sentencing Guidelines should be calculated as follows, and that I
10 will not ask for any other adjustments to, reductions of or departures to the offense level:

11 I agree that the 2001 edition of the Sentencing Guidelines incorporating guideline
12 amendments effective November 1, 2001 apply

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|----|---|-----------|
| 13 | a. Base Offense Level, U.S.S.G. §2B1.1(a): | 6 |
| 14 | b. Amount of loss: U.S.S.G. §2B1.1(b)(1)(G):
(More than 200,000) | 12 |
| 15 | c. Mitigating Role minimal participant | -4 |
| 16 | d. Relocated to evade law enforcement | 2 |
| 17 | U.S.S.G. §2B1.1(b)(8) | |
| 18 | e. Acceptance of responsibility: | <u>-3</u> |
| 19 | (If I meet the requirements of
U.S.S.G. § 3E1.1) | |
| 20 | f. Adjusted offense level | 13 |
| 21 | g. There is no agreement regarding the appropriate criminal history category. | |

22 I agree regardless of any other provision in this agreement, the government may and will provide
23 to the Court and the Probation Office all information relevant to the charged offenses or the
24 sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines
25 calculations above, the Court may conclude that a higher offense level applies to me, and, if it
26 does, I will be entitled to withdraw my guilty plea..

27 8. I agree that the court may order and I will be jointly liable to pay restitution in the
28 amount of \$400,000 to Home Depot. Neither the stipulated loss amount above or the stipulated

1 restitution amount is a reflection of the appropriate outcome of civil action C-02-5544-EDL.
2 The parties also agree and recommend that the if any money is forfeited pursuant to civil
3 action C-02-5544-EDL that that money can be counted toward restitution imposed by the
4 Court. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution I am
5 ordered to pay. Before or after sentencing, I will, upon request of the Court, the government, or
6 the U.S. Probation Office, provide accurate and complete financial information, 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 release funds and property under my control in
9 order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time
10 of sentencing.

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

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

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

22 The Government's Promises

23 12. The government agrees to move to dismiss any open charges pending against the
24 defendant in the captioned indictment at the time of sentencing.

25 13. The government agrees not to file or seek any additional charges against the
26 defendant that could be filed as a result of the investigation that led to the captioned indictment.

27 14. The government agrees to recommend the Guidelines calculations set out above.

28 The Defendant's Affirmations

1 15. I confirm that I have had adequate time to discuss this case, the evidence, and this
2 Agreement with my attorney, and that he has provided me with all the legal advice that I
3 requested.

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

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

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12 Dated: _____

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LINDA BRODERICK
Defendant

KEVIN V. RYAN
United States Attorney

17 Dated: _____

JONATHAN SCHMIDT
Assistant United States Attorney

21 I have fully explained to my client all the rights that a criminal defendant has and all the
22 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
23 and all the rights she is giving up by pleading guilty, and, based on the information now known
24 to me, her decision to plead guilty is knowing and voluntary.

25 Dated: _____

JAMES GILLER
Attorney for Defendant