

1 KEVIN V. RYAN (CASBN 118321)  
United States Attorney  
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3 CHARLES B. BURCH (CASBN 79002)  
Chief, Criminal Division  
4 JONATHAN SCHMIDT (MABN 563767)  
Assistant United States Attorney  
5  
6 450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102  
Telephone: (415) 436-6819

7 Attorneys for Plaintiff  
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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 JOHN PATRICK HAY, )  
17 Defendant. )  
18

19 I, JOHN PATRICK HAY, and the United States Attorney's Office for the Northern  
20 District 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:  
22

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

- 1 to commit at least one crime as charged in the indictment;
- 2 (2) I became a member of the conspiracy knowing of at least one of its objects and  
3 intending to help accomplish it and;
- 4 (3) One of the members of the conspiracy performed at least one overt act for the  
5 purpose of carrying out the conspiracy.

6 **Penalties**

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

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

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

18 To carry out the conspiracy we did the following:

19 A. We made UPC labels, which would fraudulently reflect the following items  
20 at the following prices:

21 Price Pfister faucet model # H35-10WV for \$39.97;

22 Delta faucet model #520-WF for \$64.97; and

23 Malibu light model # LV1076T for \$54.97.

24 B. We entered Home Depot stores and placed these fraudulent UPC labels on  
25 more expensive faucets and lights such as:

26 Price Pfister faucets model # 8B98CMB;

27 Price Pfister faucet model # 8B98PMK;

28 Delta faucet model # 3530NP-24NP; and

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Malibu light model # CL65315T.

- C. We then purchased these more expensive faucets and lights at the lower prices reflected in the fraudulent UPC labels.
- D. Next, we removed the fraudulent UPC labels we had placed on the expensive faucets and lights, revealing the authentic UPC label for the item.
- E. We 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. We 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, we 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.

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.

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

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

1 entered unless the court declines to accept that 17 is the proper offense level (as set out in  
2 paragraph 7 below) in this case. I agree that the government may also withdraw from this  
3 agreement if the Court does not accept the agreed upon Guideline calculations set out below in  
4 paragraph 7.

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

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

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|----|---|-----------|
| 9  | a. Base Offense Level, U.S.S.G. §2B1.1(a):                                    | 6         |
| 10 | b. Amount of loss: U.S.S.G. §2B1.1(b)(1)(G):<br>(More than 200,000)           | 12        |
| 11 | c. Relocated to evade law enforcement   | 2         |
| 12 | U.S.S.G. §2B1.1(b)(8)   |           |
| 13 | d. Acceptance of responsibility:  | <u>-3</u> |
| 14 | (If I meet the requirements of<br>U.S.S.G. § 3E1.1)                           |           |
| 15 | e. Adjusted offense level   | 17        |
| 16 | f. There is no agreement regarding the appropriate criminal history category. |           |

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

22 8. I agree that the court may order and I will be jointly liable to pay restitution in the  
23 amount of \$400,000 to Home Depot. Neither the stipulated loss amount above or the stipulated  
24 restitution amount is a reflection of the appropriate outcome of civil action C-02-5544-EDL.  
25 The parties also agree and recommend that the if any money is forfeited pursuant to civil  
26 action C-02-5544-EDL that that money can be counted toward restitution imposed by the  
27 Court. The restitution I agree that I will make a good faith effort to pay any fine, forfeiture or  
28 restitution I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the

1 government, or the U.S. Probation Office, provide accurate and complete financial information,  
2 submit sworn statements and give depositions under oath concerning my assets and my ability to  
3 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my  
4 control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at  
5 the time of sentencing.

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

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

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

17 The Government's Promises

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

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

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

23 The Defendant's Affirmations

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

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

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
JOHN PATRICK HAY  
Defendant

KEVIN V. RYAN  
United States Attorney

Dated: \_\_\_\_\_

\_\_\_\_\_  
JONATHAN SCHMIDT  
Assistant United States Attorney

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
LARRY B. KUPERS  
Attorney for Defendant