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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. CR-02-0265-SI  
14 Plaintiff, )  
15 v. ) PLEA AGREEMENT  
16 SHERMAN S. SMITH, )  
17 Defendant. )

18  
19 I, Sherman S. Smith, (“Defendant”), and the United States Attorney’s Office for the  
20 Northern District of California (“the government”) enter into this written plea agreement (the  
21 “Agreement”) pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal  
22 Procedure:

23 The Defendant’s Promises

24 1. I agree to plead guilty to Count Nineteen of the captioned indictment charging me  
25 with securities fraud, in violation of 15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. §240.10b-5. I agree  
26 that the elements of the offense and the maximum penalties are as follows: (1) I employed a  
27 device, scheme, or artifice to defraud (2) My acts were in connection with the purchase or sale of  
28 stock; (3) I used the mail, telephone or other means of interstate commerce in connection with

1 these acts; and (4) I acted for the purpose of defrauding buyers or sellers of securities. I  
2 understand that to defraud someone is to make a statement or representation which is untrue  
3 relating to something important to the purchase or sale of stock.

- 4 a. Maximum prison sentence 10 years
- 5 b. Maximum fine \$250,000
- 6 c. Maximum supervised release term 2-3 years
- 7 d. Mandatory special assessment \$100
- 8 e. Restitution To be determined but approx. \$1,770,000

9  
10 2. I agree that I am guilty of the offense to which I will plead guilty. I agree that the  
11 following facts are true:

12 I was an investment advisor working at a company I founded, SSS&A, and later the  
13 founder of a church consulting business, Donne Corporation. Beginning in or about September  
14 1998, and continuing to at least 2000, I admit that I defrauded Anita Walters by causing her and  
15 her family to give me money for investments in stock and securities I promised to make on their  
16 behalf. I met with Anita Walters in Florida and convinced her to entrust me with her inheritance  
17 (and that of her adult children and minor child) totaling approximately \$1.77 million dollars. I  
18 promised her that I would invest and manage her money for her and her children in privately held  
19 securities, that her investment would be safe and that her investment would earn 12% per year. I  
20 knew that Ms. Walters was relying on me for my investment expertise.

21 Instead of managing her money in the manner that I had promised, I admit that I sent, and  
22 caused others to send, false or misleading account statements to Ms. Walters and her family by  
23 mail in order to make them think that their money was safely invested in a company I controlled,  
24 Donne Corporation, and/or other securities and earning the 12% interest that I had promised.  
25 When I caused these statements to be sent, I knew that Donne was losing money and not earning  
26 12% interest for its investors. I also knew that I had not invested Ms. Walters money in Donne at  
27 that time. After the fact, I caused Donne to issue stock certificates to Ms. Walters and her family  
28 to try to convince them that I had invested a large portion of their money in Donne, when I had

1 not. I admit that I spent most of Ms. Walters' money for my benefit.

2 I further admit that by my conduct, I violated the securities laws. I understand, waive,  
3 and stipulate to the fact that Regulation D of the securities laws does not exempt me from civil or  
4 criminal prosecution if there was a material misrepresentation of fact in connection with the sale  
5 of a security as there was in this case in connection with my dealings with Ms. Walters and her  
6 family.

7 In addition, I admit that I caused the following interstate wire transfers as part of my  
8 fraudulent scheme: on or about September 28, 1998, I caused Ms. Walters to wire transfer from  
9 her credit union account in Florida, \$945,000 into the Donne bank account I controlled, account  
10 number 3008845 at the Napa National Bank in Napa, California. [I later transferred \$800,000  
11 from the Donne account into my personal account, (Sherman S. Smith, PhD), account number  
12 3118666 at the Napa National Bank]. Between October 1998 and January 1999, I caused Ms.  
13 Walters to wire transfer approximately \$825,000, into my account at the Bank of the Bluegrass in  
14 Lexington, Kentucky, account number 96866.

15 Also, I admit that I used some of the proceeds from the above described monetary  
16 transactions to build a house I now own in Kentucky located at 4299 Mt. Horeb Pike, Lexington,  
17 Kentucky. (hereinafter "the Kentucky property)

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

23 4. I agree to give up my right to appeal my conviction, the judgment, and orders of  
24 the Court. I also agree to give up any right I may have to appeal my sentence, except that I  
25 reserve my right to appeal an upward departure from the Guideline imprisonment range  
26 determined by the Court.

27 5. I agree not to file any collateral attack on my conviction or sentence, including a  
28 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim

1 that my constitutional right to the effective assistance of counsel was violated.

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

4 7. I agree that the Sentencing Guidelines should be calculated using the Guidelines  
5 manual dated Nov. 1, 2000, as follows, and that I will not ask for any other adjustments to or  
6 reductions of the offense level:

7	a. Base Offense Level, U.S.S.G. § 2F1.1:	6
8	b. Amount of loss (> than \$1.5 million but < than \$2.5 million):	+12
9	c. More than Minimal planning:	+2
10	d. Abuse of Position of Trust:	+2
11	e. Increase/decrease for role in the offense:	+0
12	f. Acceptance of responsibility:	22
13	(If I meet the requirements of U.S.S.G. § 3E1.1)	-3
14	g. Adjusted offense level:	19

15 I reserve the right to move for a downward departure from the otherwise applicable guideline  
16 range. I understand that the government reserves the right to oppose any such motion and  
17 depending on the guideline calculations ultimately found to be applicable, may move for an  
18 upward departure to a level 19 as stated above. I agree that, regardless of any other provision in  
19 this agreement, the government may and will provide to the Court and the Probation Office all  
20 information relevant to the charged offenses or the sentencing decision. I also agree that the  
21 Court is not bound by the Sentencing Guidelines calculations above, the Court may conclude that  
22 a higher guideline range applies to me, and, if it does, I will not be entitled, nor will I ask, to  
23 withdraw my guilty plea. As part of my plea, prior to the date of sentencing, I agree to sell the  
24 Kentucky Property and place the proceeds into an escrow account. These proceeds will then be  
25 used to pay restitution. In the alternative, on the date of sentencing, I agree to forfeit the  
26 Kentucky property to the United States, with the understanding that the United States will  
27 recommend that the proceeds from this forfeited property be used to help satisfy my restitution  
28

1 obligation.

2 8. In return for the government's promises set out below, I agree to pay restitution in  
3 an amount to be set by the Court, which I understand will be approximately \$1,770,000 (less any  
4 amounts I have already paid) for the benefit of Ms. Walters and her family. I understand that  
5 other investors including my former SSS&A clients and Donne investors may also seek  
6 restitution. I agree to pay restitution to my former SSS&A clients and Donne investors. I  
7 understand that such restitution may not be required under the law, however, I stipulate to paying  
8 such restitution. I therefore understand and acknowledge and stipulate pursuant to 18 U.S.C. §  
9 3663(a)(3) that restitution is not limited to the loss attributable to Ms. Walters and her family  
10 under Count 19 but that it can and should include restitution to any of the other SSS&A and  
11 Donne investors. I further agree that I will make a good faith effort to pay any fine, forfeiture or  
12 restitution I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the  
13 government, or the U.S. Probation Office, provide accurate and complete financial information,  
14 submit sworn statements and give depositions under oath concerning my assets and my ability to  
15 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my  
16 control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at  
17 the time of sentencing.

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

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

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

1 the United States Securities and Exchange Commission.

2 The Government's Promises

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

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

7 14. The government agrees to recommend the Guidelines calculations set out above,  
8 however, if the Court determines that the defendant's adjusted offence level is less than 19, the  
9 government reserves the right to move for an upward departure to level 19. The government also  
10 reserves the right to oppose any motions for downward departures.

11 The Defendant's Affirmations

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

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

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

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

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SHERMAN S. SMITH  
Defendant

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KEVIN V. RYAN  
United States Attorney

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

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JEFFREY L. BORNSTEIN  
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: \_\_\_\_\_

\_\_\_\_\_  
ROBERT E. CAREY, JR.  
Attorney for Defendant