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

13 UNITED STATES OF AMERICA,)

14 Plaintiff,)

15 v.)

16 ALBERT J. BERGONZI,)

17 Defendant.)

No. CR-00-0505-MJJ

PLEA AGREEMENT

18
19 I, Albert J. Bergonzi, and the United States Attorney's Office for the Northern District of
20 California (hereafter "the Office") enter into this written plea agreement (the "Agreement")
21 pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to counts one and two of the above-captioned second
24 superseding indictment charging me with conspiracy to commit securities fraud, in violation of
25 18 U.S.C. § 371, and securities fraud, in violation 15 U.S.C. § 78j(b).

26 a. I understand that the elements of conspiracy are: (1) there was an agreement
27 between two or more persons to violate the securities laws of the United States; (2) I became a
28 member of the conspiracy knowing of its objects and intending to help accomplish them; and (3)

1 one of the members of the conspiracy performed at least one overt act for the purpose of carrying
2 out the conspiracy. I understand that the maximum penalties are:

- | | | | |
|---|------|---------------------------------|---|
| 3 | i. | Maximum prison sentence | 5 years |
| 4 | ii. | Maximum fine | \$250,000 (or twice
the gross gain or loss,
whichever is greater) |
| 5 | | | |
| 6 | iii. | Maximum supervised release term | 3 years |
| 7 | iv. | Mandatory special assessment | \$ 100 |
| 8 | v. | Restitution for all losses | |

9 b. I understand that the elements of securities fraud are: (1) I employed a device,
10 scheme, or artifice to defraud, (2) in connection with the purchase or sale of a security, and (3) I
11 acted willfully. I understand that the maximum penalties are:

- | | | | |
|----|------|---------------------------------|---|
| 12 | i. | Maximum prison sentence | 10 years |
| 13 | ii. | Maximum fine | \$1,000,000 (or twice
the gross gain or loss,
whichever is greater) |
| 14 | | | |
| 15 | iii. | Maximum supervised release term | 3 years |
| 16 | iv. | Mandatory special assessment | \$ 100 |
| 17 | v. | Restitution for all losses | |

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

20 a. Prior to January 12, 1999, McKesson Corp. ("McKesson") was a corporation
21 headquartered in San Francisco, California. McKesson was the largest healthcare supply
22 management company in the United States.

23 b. Prior to January 12, 1999, HBO & Company ("HBOC") was a corporation
24 headquartered in Alpharetta, Georgia, an Atlanta suburb. HBOC manufactured and sold
25 information technology products, primarily software, to customers in the health care industry.
26 HBOC was the largest health care information technology company in the United States.

27 c. On January 12, 1999, McKesson acquired HBOC, and the merged company
28 became known as McKessonHBOC. McKessonHBOC's headquarters were in San Francisco,

1 California. The portion of the company formerly known as HBOC became a wholly-owned
2 subsidiary of McKesson, continued to have its base in Alpharetta, Georgia, and operated as the
3 Information Technology Business of McKessonHBOC.

4 d. HBOC and McKessonHBOC were publicly traded companies. HBOC's stock
5 was traded on the national market of the National Association of Securities Dealers' Automated
6 Quotation System, an electronic trading system. McKessonHBOC's stock was traded on the
7 New York Stock Exchange. Both companies had shareholders located throughout the United
8 States, including in the Northern District of California. As public companies, HBOC and
9 McKessonHBOC were required to comply with rules and regulations of the Securities and
10 Exchange Commission ("SEC"). I understood that those regulations are designed to protect
11 members of the investing public by, among other things, ensuring that a company's financial
12 information is accurately recorded and disclosed to the public.

13 e. From January 1998 until November 1998, I was HBOC's co-president and co-
14 chief operating officer with Jay Gilbertson. I became HBOC's sole president and COO in
15 November 1998 following Gilbertson's resignation from the company. Following the merger, I
16 became corporate executive vice president of McKessonHBOC and president and chief executive
17 officer of the former HBOC operation.

18 f. Beginning in the first half of 1998 and until at least April 29, 1999, I conspired
19 with other officers of HBOC and McKessonHBOC to inflate HBOC's and McKessonHBOC's
20 reported revenue and earnings in violation of rules and regulations promulgated by the SEC and
21 in violation of Generally Accepted Accounting Principles ("GAAP").

22 g. The object of the conspiracy was to mislead Wall Street analysts, HBOC and
23 McKessonHBOC investors, and the SEC about HBOC's and McKessonHBOC's true revenue
24 and earnings for the purpose of increasing and maintaining the companies' stock price.

25 h. In furtherance of the conspiracy, we falsely inflated quarterly software sales
26 revenues by, among other things, recording revenue on contracts that were conditioned on "side
27 letters" that permitted customers to cancel the contract or return software, and which were
28 concealed from outside auditors, and backdating contracts to record revenue in prior quarterly

1 periods. From the first half of 1998 through April 1999, I actively participated in the use of side
2 letters and backdating, both in contracts I negotiated and by encouraging my subordinates to use
3 them in contracts they negotiated. I understood that, as a result of these activities, HBOC's and
4 McKessonHBOC's accounting personnel would and did make false entries in company books
5 and records at quarter-end in order to increase revenue and net income.

6 i. Even though I and other HBOC and McKesson HBOC officers knew that the
7 companies' earnings had been improperly inflated and recorded in the books and records of the
8 companies, I permitted others to make materially false statements to HBOC's and McKesson's
9 outside auditors in connection with their quarterly reviews and to the SEC in Form 10-Qs and
10 other required filings. I participated in making false statements to financial analysts and the
11 investing public in press releases and oral statements regarding HBOC's and McKesson HBOC's
12 financial performance.

13 j. McKessonHBOC's first combined quarter ended on March 31, 1999. On
14 March 31, 1999, a proposed transaction between McKessonHBOC and Oracle Corporation that
15 McKesson's chief financial officer and I had been negotiating for several weeks was called off by
16 Oracle and I understood that the Information Technology (HBOC) subsidiary would not meet its
17 forecasted revenue goals for the quarter. I recognized that if the company missed its forecasted
18 revenues, its stock price would almost certainly drop.

19 k. Among the fraudulent transactions in which I participated, I conspired with
20 others at McKessonHBOC to fraudulently recognize revenue in the quarter ended March 31,
21 1999, from an April 1, 1999, agreement with Data General, Inc. The agreement was completed
22 on April 5, 1999. The agreement consisted of two written contracts, one of which contained a
23 provision that permitted Data General to return the software it had purchased from
24 McKessonHBOC if it was not able to resell it, a condition that I knew precluded revenue
25 recognition.

26 l. On April 22, 1999, McKessonHBOC released its unaudited financial
27 statements for the March-quarter to the public. The statements were false because they included
28 revenue from agreements, including the agreement with Data General, that had not been

1 completed during the quarter and were subject to return rights and cancellation. I knew that the
2 financial statements would be relied upon by members of the investing public in deciding
3 whether to purchase or sell McKessonHBOC securities.

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

9 5. I agree to give up my right to appeal my convictions, the judgment, and orders of
10 the Court. I also agree to waive any right I may have to appeal my sentence, except that I may
11 appeal any sentence (a) greater than the 15 year combined statutory maximum prison sentence or
12 (b) based on a total offense level higher than level 29 (unless I fail to accept responsibility).

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

16 7. I agree not to ask the Court to withdraw my guilty pleas at any time after they are
17 entered.

18 8. I have reviewed the Sentencing Guidelines with my attorneys and I agree that the
19 following Guidelines provisions, adjustments, and enhancements, contained in the Guidelines
20 Manual effective November 1, 1998, apply in my case:

21	a. Base offense level, USSG §2F1.1(a):	6
22	b. Loss amount, USSG §2F1.1(b)(1)(S), more than \$80 million:	+18
23	c. More than minimal planning/multiple victims, USSG §2F1.1(b)(2):	+2
24	d. Aggravating role, USSG §3B1.1(a):	+4
25	e. Abuse of position of trust, USSG §3B1.3:	+2
26	f. Acceptance of responsibility, USSG §3E1.1:	-3
27		
28	Total:	29

1 9. I agree that I will pay restitution as follows: (1) I will pay an amount equal to the
2 current value of the McKesson stock in my control as of October 16, 2003, a total of 1,596
3 shares; and (2) I will exercise my McKesson stock options that will generate an after-tax profit as
4 of the date of my exercise, liquidate the resulting shares, and pay the net proceeds (less income
5 taxes and costs of sale). In addition, if in the future I obtain or obtain the right to sell all or part
6 of the 100,000 shares of McKesson stock now being held by the company as security for my
7 promissory note and I have no further obligation under the promissory note, I will liquidate the
8 stock and pay the net proceeds (less income taxes and costs of sale) as restitution. I will assist
9 the United States in ensuring that all proceeds from the stock and stock options be deposited in
10 the Court Registry Investment System maintained by the Clerk of Court, to be distributed as
11 directed by the Court in the future. I agree that I will complete items 1 and 2, above, within three
12 months of entering my guilty pleas. I agree that I will make a good faith effort to pay any other
13 fine, forfeiture or restitution I am ordered to pay. Before or after sentencing, I will, upon request
14 of the Court, the Office, or the U.S. Probation Office, provide accurate and complete financial
15 information, submit sworn statements and give depositions under oath concerning my assets and
16 my ability to pay, and release funds and property under my control in order to pay any fine,
17 forfeiture, or restitution. I agree to pay the special assessment of \$200 at the time of sentencing.

18 10. I agree not to sell, transfer to others, pledge or otherwise dispose of or encumber
19 any property or other assets valued at more than \$10,000 that I own, directly or indirectly and in
20 whole or in part, or in which I have any financial interest, either before sentencing without
21 notifying the Office or after sentencing until any restitution has been paid or the Court orders
22 otherwise, except for payments of bona fide legal fees and expenses, and state and federal taxes.

23 11. I agree to cooperate with the Office before and after I am sentenced. My
24 cooperation will include, but will not be limited to, the following:

- 25 a. I will make myself available to the Office and the SEC and will respond
26 truthfully and completely to any and all questions put to me, 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 Office;
- 28 c. I will testify truthfully at any grand jury, court or other proceeding as
requested by the Office;

1 d. I will request continuances of my sentencing date, as necessary, until my
2 cooperation is completed; and

3 e. I will tell the Office about any contacts I may have with any co-defendants
4 or subjects of investigation, or their attorneys or individuals employed by
5 their attorneys.

6 12. I agree that the Office's decision whether to file a motion pursuant to USSG
7 §5K1.1 and/or Fed. R. Crim. P. 35, as described in the Office promises section below, is based
8 on its sole and exclusive decision of whether I have provided substantial assistance and that
9 decision will be binding on me. I understand that the Office's decision whether to file such a
10 motion, or the extent of the departure recommended by any motion, will not depend on whether
11 convictions are obtained in any case. I also understand that the Court will not be bound by any
12 recommendation made by the Office.

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

20 14. If I am prosecuted after failing to comply with any promises I made in this
21 Agreement, then (a) I agree that any statements I made to any law enforcement or other
22 government agency or in Court, whether or not made pursuant to the cooperation provisions of
23 this Agreement, may be used in any way; (b) I waive any and all claims under the United States
24 Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal
25 Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my
26 statements, or any leads derived from those statements; and (c) I waive any defense to any
27 prosecution that it is barred by a statute of limitations, if the limitations period has run between
28 November 11, 1999, and the date I am indicted.

15. As to any matter in which I am cooperating with the Office or the SEC pursuant to
this Agreement, I waive any right I may have to assert the attorney-client privilege to decline to

1 answer questions relating to communications with counsel for any other defendant including a
2 defendant acting *pro se*, except as to communications where counsel for the other defendant was
3 my attorney of record. I also waive my right to conflict-free representation by any attorney or
4 *pro se* defendant where a conflict arises from that attorney's or defendant's participation in a
5 joint defense agreement to which I also was a party.

6 16. I agree that this Agreement contains all of the promises and agreements between
7 the Office and me, and I will not claim otherwise in the future.

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

10 The Office's Promises

11 18. The Office agrees to move to dismiss any open charges pending against the
12 defendant in the above-captioned second superseding indictment at the time of sentencing.

13 19. Other than the charges contained in the indictment, the Office agrees not to file or
14 seek any additional charges against the defendant that could be filed as a result of the
15 investigation that led to the pending second superseding indictment.

16 20. The Office agrees not to use any statements made by the defendant pursuant to
17 this Agreement against him, unless the defendant fails to comply with any promises in this
18 Agreement. The Office may, however, tell the Court and the U.S. Probation Department about
19 the full extent of the defendant's criminal activities in connection with sentencing, including any
20 information learned from the defendant through his cooperation or through proffer sessions with
21 the government prior to this Agreement.

22 21. If, in its sole and exclusive judgment, the Office determines that the defendant has
23 cooperated fully and truthfully, provided substantial assistance to law enforcement authorities
24 within the meaning of USSG §5K1.1, and otherwise complied fully with this Agreement, it will
25 file with the Court a motion under §5K1.1 and/or Fed. R. Crim. P. 35 that explains the nature and
26 extent of the defendant's cooperation and recommends a downward departure or sentence
27 reduction.

1 22. The Office agrees to recommend the offense level calculation set forth in
2 paragraph 8, above, including, based on the information now known to it, a downward
3 adjustment of three levels for acceptance of responsibility under USSG §3E1.1. If defendant
4 fails to satisfy the requirements of USSG §3E1.1, the Office is released from its promise to
5 recommend this calculation.

6 23. Based on the defendant's agreement to relinquish any interest in McKesson stock
7 and stock options, as set forth above, and information provided to the Office regarding his assets
8 and liabilities, the Office will not request or recommend a criminal fine or additional restitution,
9 unless defendant has provided false information regarding his assets and liabilities or violated
10 this Agreement in any other way.

11 The Defendant's Affirmations

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

15 25. 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.

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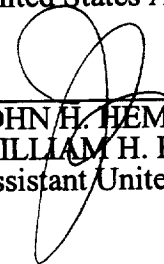
26. I confirm that my decision to enter guilty pleas is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened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

Dated: 10/14/03


ALBERT J. BERGONZI
Defendant

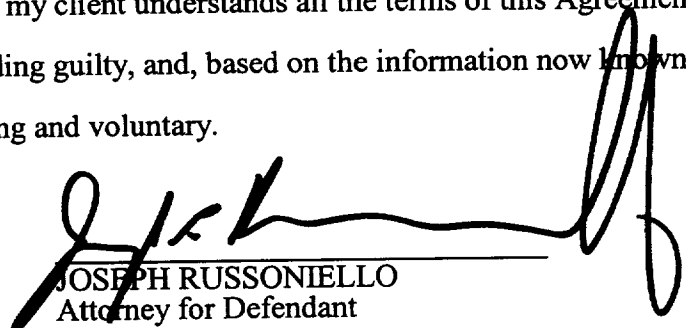
KEVIN V. RYAN
United States Attorney

Dated: 10/16/03


JOHN H. HEMANN
WILLIAM H. KIMBALL
Assistant United States Attorneys

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: 10/16/03


JOSEPH RUSSONIELLO
Attorney for Defendant