

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

FILED

JAN - 9 2015

IN OPEN COURT
BY: JAMES W. MCCORMACK, CLERK
DEPUTY CLERK

UNITED STATES OF AMERICA)
)
v.)
)
MICHAEL A. MAGGIO)
)

No. 4:15CR00001-1 BSM

PLEA AGREEMENT

The Attorney for the United States, Acting Under Authority Conferred by Title 18, United States Code, Section 515, for the Eastern District of Arkansas, Patrick Harris, by and through Julie Peters, Assistant United States Attorney, and Jack Smith, Chief, Public Integrity Section, Criminal Division, United States Department of Justice, by and through Edward P. Sullivan, Trial Attorney, and MICHAEL A. MAGGIO, defendant, represented by the undersigned counsel, hereby agree to the following terms and conditions in connection with the above referenced proceedings.

1. **GUILTY PLEA:** The defendant will waive indictment and permit the United States to proceed by Information charging the defendant with Bribery Concerning Programs Receiving Federal Funds, a violation of Title 18, United States Code, Section 666(a)(1)(B). The defendant also agrees to enter a plea of guilty to the Information.

2. **ELEMENTS OF THE CRIME:** The parties agree the elements of the offense to which the defendant will plead guilty are:

A. *One*, the defendant was an agent of the State of Arkansas, Twentieth Judicial District, Second Division, which is a part of the judicial branch of the government of the State of Arkansas;

B. *Two*, between in or about February 2013 and continuing until in or about mid-2014, the defendant corruptly accepted and agreed to accept from another something of value,

that is, campaign contributions, in connection with a business, transaction, or series of transactions of the State of Arkansas, Twentieth Judicial District, Second Division;

C. *Three*, the business, transaction, or series of transactions of the State of Arkansas, Twentieth Judicial District, Second Division, involved something of a value of \$5,000 or more; and

D. *Four*, the State of Arkansas, Twentieth Judicial District, Second Division, received benefits in excess of \$10,000 in each of the calendar years 2013 and 2014, pursuant to a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of federal assistance.

The term “corruptly” means that the defendant acted voluntarily and intentionally and, at least in part, in return for being influenced to and induced to remit a \$5.2 million judgment in a civil case to \$1 million.

The defendant agrees that he is guilty of the offense charged and each of these elements is true.

3. **PENALTIES:**

A. **STATUTORY PENALTIES:** The maximum penalty for the charge set forth in Count One is not more than ten years imprisonment, not more than three years supervised release, a fine of not more than \$250,000 or twice the pecuniary gain or loss pursuant to 18 U.S.C. § 3571(d), and a \$100 special assessment.

B. **SUPERVISED RELEASE:** Supervised release is a period of time following imprisonment during which defendant will be subject to various restrictions and requirements. Defendant understands that if defendant violates one or more of the conditions of

any supervised release imposed, the defendant may be returned to prison for all or part of the term of supervised release, which could result in defendant serving a total term of imprisonment greater than the statutory maximum stated above.

4. **WAIVERS**: The defendant acknowledges that he has been advised of and fully understands the nature of the charges to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law. The defendant further understands that by entering into this Agreement and Addendum, he is waiving certain constitutional rights, including, without limitation, the following:

A. The right to appeal or collaterally attack, to the full extent of the law, the conviction and sentence imposed, including any forfeiture or restitution order, as follows:

(1) the defendant waives the right to appeal the conviction and sentence directly under Title 28, United States Code, Section 1291 and/or Title 18, United States Code, Section § 3742(a), including any issues that relate to the establishment of the Guideline range, except that the defendant reserves the right to appeal claims of prosecutorial misconduct and the defendant reserves the right to appeal the sentence if the sentence imposed is above the Guideline range that is established at sentencing;

(2) the defendant expressly acknowledges and agrees that the United States reserves its right to appeal the defendant's sentence under Title 18, United States Code, Section 3742(b) and *United States v. Booker*, 543 U.S. 220 (2005);

(3) the defendant waives the right to collaterally attack the conviction and sentence pursuant to Title 28, United States Code, Section 2255, except for claims based on ineffective assistance of counsel or prosecutorial misconduct;

(4) the defendant waives the right to have the sentence modified pursuant to Title 18, United States Code, Section 3582(c)(2); and

(5) the defendant waives the right to appeal the Court's determination of any forfeiture issues and subsequent forfeiture order, if any.

B. The right to plead not guilty or to persist in that plea if it has already been made, and the right to a speedy and public trial before a jury;

C. The right to be presumed innocent and to have the burden of proof placed on the United States to establish guilt beyond a reasonable doubt;

D. The right to confront and cross examine witnesses;

E. The right to testify in his own behalf if the defendant so chooses, or, the right to remain silent and not be compelled to testify, and to have that choice not used against the defendant;

F. The right to call witnesses and to require those witnesses to appear by issuing subpoenas.

G. Pursuant to Federal Rule of Criminal Procedure 11(b)(1)(O), the defendant understands that upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

5. **STIPULATIONS:** The United States and the defendant stipulate to the following:

A. The parties agree that the base offense level is 14 pursuant to U.S.S.G. § 2C1.1(a), because the defendant was a public official.

B. The parties agree that the base offense level is increased by four levels pursuant to U.S.S.G. §§ 2C1.1(b)(2) and 2B1.1(b)(C), because the things of value and benefits received by the defendant totaled between \$10,000 and \$30,000.

C. The parties agree the base offense level is increased by four levels pursuant to U.S.S.G. § 2C1.1(b)(3), because the defendant was an elected public official.

D. The defendant is eligible for a 2 point reduction for acceptance of responsibility unless the defendant takes any action between the entry of the guilty plea and imposition of the sentence that is inconsistent with acceptance of responsibility. If the offense level is 16 or greater, the determination of whether the defendant is eligible for a third point reduction for acceptance of responsibility will be made by the United States at the time of sentencing.

E. The parties stipulate that no other enhancements or reductions under Sections 2B1.1 or 2C1.1 or Chapter 3 of the Guidelines apply.

F. The defendant stipulates that the following facts are true:

In 2013 and 2014, the defendant, MICHAEL A. MAGGIO, was an elected circuit judge for the State of Arkansas, Twentieth Judicial District, Second Division. During his tenure as a circuit judge, MAGGIO was an agent of the State of Arkansas and the Twentieth Judicial District, and he presided over criminal, civil, domestic relations, and probate cases filed in Faulkner, Van Buren, and Searcy counties. Individual A was a stockholder in numerous nursing homes located in located in Arkansas. Individual A owned Company A, a nursing home located in Faulkner County. Individual B was a lobbyist and political fundraiser.

In or about 2012, MAGGIO was assigned to preside over a civil matter filed in Faulkner County Circuit Court. The plaintiff in that matter, the estate of a decedent, filed a complaint alleging, among other things, that Company A, Individual A, and others had neglected and mistreated the decedent leading to the decedent's death while the decedent was in Company A's care. In or about May 2013, the lawsuit proceeded to trial, with Company A as the only defendant. On or about May 16, 2013, at approximately 5:50 p.m., the jury returned a verdict in the plaintiff's favor, awarding damages against Company A in the amount of \$5.2 million dollars. On or about June 17, 2013, at approximately 10:05 a.m., attorneys representing Company A filed a motion for new trial or remittitur, seeking, among other things, to reduce the amount of damages awarded by the jury to the plaintiff.

Also in or about early 2013, Individual B and others asked MAGGIO to consider running as a candidate for the Arkansas Court of Appeals. In or about May 2013, MAGGIO and Individual B met with others to discuss MAGGIO's campaign for the Court of Appeals. During the meeting, MAGGIO was told that he would need to raise more than \$100,000 to run a successful campaign. Individual B told MAGGIO that MAGGIO would be responsible for smaller donations from friends and family, totaling approximately \$25,000 to \$50,000, and Individual B would be responsible for covering the difference by raising funds from "industry types" including, among other entities, nursing homes. On or about May 16, 2013, at approximately 10:33 a.m., Individual B sent MAGGIO a text message stating, "I have a LR lunch today with the nursing home folks. The topic will be judicial races. You are at the top of the list."

On or about June 27, 2013, MAGGIO formally announced his candidacy for the Arkansas Court of Appeals for the nonpartisan general election to be held on May 20, 2014. On or about June 29, 2013, at approximately 8:15 a.m., Individual B sent MAGGIO a text message stating in part, "Well your first 50k is on the way." MAGGIO understood that this \$50,000 included financial support from Individual A.

Between on or about June 29, 2013 and or or about July 8, 2013, Individual B communicated to MAGGIO, stating in essence, "Win, lose, or draw, you have Individual A's support," referring to MAGGIO's decision on the motion for new trial or remittitur. MAGGIO understood that the purpose of this message was not to reassure MAGGIO that he had Individual A's support regardless of any decision on the remittitur, but rather Individual B was reminding MAGGIO to make a favorable ruling to Individual A and Company A because of Individual A's financial support of MAGGIO's campaign. At another time, Individual B reminded MAGGIO that he would receive campaign financial support if he made the "tough calls" while on the bench. MAGGIO understood that Individual B was advising MAGGIO that, in exchange for MAGGIO's ruling in favor of Individual A and Company A, Individual A would provide campaign donations to MAGGIO.

On or about July 8, 2013, during the early afternoon, MAGGIO held a hearing on Company A's pending post-verdict motions, including the motion for remittitur. On or about July 10, 2013, MAGGIO signed an order denying Company A's motion for a new trial, but granting Company A's motion for remittitur. MAGGIO reduced the judgment against Company A from \$5.2 million to \$1 million.

At the time that MAGGIO granted the remittitur, MAGGIO understood that: (a) the Arkansas Code of Judicial Conduct prohibited candidates for judicial office from soliciting or accepting contributions for a candidate's current campaign more than 180 days before the applicable election; (b) judicial candidates in Arkansas could not accept contributions for the nonpartisan judicial election (held on May 20, 2014) until November 21, 2013; (c) judicial candidates were prohibited from personally soliciting campaign contributions or personally accepting campaign contributions, but could establish campaign committees to receive contributions; and (d) to reduce potential disqualification and to avoid the appearance of impropriety, judicial candidates should, as much as possible, not be aware of those who have contributed to the campaign. While MAGGIO told others that he needed to stay away from the nursing home industry while raising money because of the pending case, in fact MAGGIO was aware prior to granting the remittitur that Individual B had obtained a specific commitment from Individual A to contribute to MAGGIO's campaign for the Arkansas Court of Appeals, and that Individual B had done so outside of the authorized time frame.

MAGGIO granted the remittitur in part because MAGGIO wanted to retain Individual A's financial support of his campaign for Court of Appeals. MAGGIO accepted Individual A's financial support of his campaign for the Arkansas Court of Appeals intending to be influenced and induced to remit the judgment against Company A.

MAGGIO stipulates that the United States would show that on or about July 8, 2013, Individual A wrote \$3,000 checks to eight PACS, for a total of \$24,000, intending that that money would go to MAGGIO's campaign. MAGGIO further stipulates that the United States would show that Individual B used seven of these checks to fund PACs that contributed to MAGGIO's

campaign. Specifically, MAGGIO stipulates that between in or about December 2013 and in or about January 2014, MAGGIO's campaign received at least \$12,950 from PACs established in or about July 2013 by Individual B, funded by the checks written by Individual A on July 8, 2013.

As indicated above, between in or about May 2014 and in or about July 2014, MAGGIO communicated with Individual B in person, by text, and by telephone. MAGGIO stipulates that records obtained from his cellular phone and the cellular phones of Individual A and Individual B would show the following contacts:

On May 16, 2013:

6:22 pm	MAGGIO to Individual B	text
6:33 pm	Individual A to Individual B	call, 6 minutes 49 seconds
6:40 pm	Individual B to MAGGIO	text
6:44 pm	MAGGIO to Individual B	text

On June 17, 2013:

10:29am	Individual A to Individual B	call, 5 seconds
5:51pm	Individual A to Individual B	call, 3 seconds
6:23pm	Individual B to Individual A	call, 4 minutes 39 seconds
9:26pm	Individual B to MAGGIO	text
9:27pm	MAGGIO to Individual B	text
9:28pm	MAGGIO to Individual B	text
9:42pm	MAGGIO to Individual B	text
9:45pm	Individual B to MAGGIO	text
9:47pm	MAGGIO to Individual B	text
9:49pm	Individual B to MAGGIO	text
9:49pm	MAGGIO to Individual B	text

On July 8, 2013:

9:32 am	Individual B to MAGGIO	call, 4 seconds
9:32 am	Individual B to MAGGIO	text
9:48 am	MAGGIO to Individual B	call, 31 seconds
9:49 am	Individual B to MAGGIO	call, 4 minutes 15 seconds

On July 9, 2013:

3:30pm	Individual B to MAGGIO	call, 6 seconds
3:31pm	Individual B to MAGGIO	call, 1 minute 22 seconds
4:05pm	Individual B to Individual A	call, 8 minutes 27 seconds

During this time period, MAGGIO's communications with Individual B were about the campaign or the litigation. In March 2014, when Individual A's contributions to the PACs became publicly known, MAGGIO talked with another person about deleting text messages between MAGGIO and Individual B. That person also suggested MAGGIO delete text messages between MAGGIO and that person. MAGGIO then deleted these text messages.

MAGGIO further stipulates that the United States would show that in calendar years 2013 and 2014, the State of Arkansas, Twentieth Judicial District, received over \$10,000 in federal funding.

Finally, MAGGIO agrees that the facts described in this paragraph are included for the purpose of establishing a factual basis for his plea, but do not include all of the facts and information known by MAGGIO about these events and acts.

G. The United States agrees to recommend a sentence within the guidelines range.

The parties understand that the Court is not bound by these stipulations. The defendant further understands that if the Court does not accept this Plea Agreement, the defendant is not entitled to withdraw the guilty plea or otherwise be released from defendant's obligations under this Agreement and Addendum.

6. **SENTENCING GUIDELINES:** It is specifically understood by the defendant that the Sentencing Guidelines are not mandatory but are advisory, and that the Court is to consult them in determining the appropriate sentence. The defendant understands that the determination of the applicability of the Guidelines and of the appropriate sentence will be made by the Court. The defendant is aware that any estimate of the probable sentencing range under the Sentencing Guidelines that the defendant may have received from the defendant's counsel, the United States,

or the Probation Office, is merely a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive and the defendant cannot withdraw a guilty plea, or otherwise avoid the defendant's obligations under this Agreement and Addendum, based upon the actual sentence imposed by the Court. The parties understand and agree that if the guideline range is greater or less than the defendant or the United States expected it to be, and/or the sentence imposed by the Court is greater or lesser than anticipated, neither the defendant nor the United States will be allowed to withdraw, nor request withdrawal of, the guilty plea, nor be excused from any obligation under this Agreement and Addendum.

7. **ALLOCUTION:** The United States reserves the right to bring any and all facts which it believes are appropriate to the attention of the Court.

8. **COOPERATION IN THE SENTENCING PROCESS:**

A. The defendant agrees to truthfully provide all information to the Probation Office as is needed for preparation of the pre-sentence report, including, but not limited to, criminal history information. The defendant shall voluntarily provide a complete and truthful written accounting of the defendant's criminal history to the Probation Office.

B. The defendant agrees to execute all waivers necessary for the preparation of the pre-sentence report.

C. The defendant understands and acknowledges that the defendant's obligation of disclosure regarding criminal history is not limited to arrests and convictions reported in computer databases, but requires the defendant to disclose all arrests and/or

convictions, including any juvenile matters, regardless of whether the defendant believes the arrest/conviction counts under the Sentencing Guidelines.

D. The defendant is required to comply with these obligations no later than the expiration of the date on which objections to the pre-sentence report are due.

9. **FINANCIAL MATTERS:**

A. **FINANCIAL STATEMENT:** The defendant agrees to fully and truthfully complete a Financial Statement provided by the United States Probation Office.

B. **FINES:** The defendant understands that unless the Court determines that the defendant is financially unable to pay a fine, the Court must impose a fine pursuant to the Sentencing Reform Act of 1984.

C. **SPECIAL PENALTY ASSESSMENT:** The defendant agrees to pay to the United States a special assessment of \$100.00 per count, as required by Title 18, United States Code, Section 3013. This special assessment is to be paid by bank cashier's check or money order as directed by the Court. Cashier's checks or money orders should be made payable to "Clerk, United States District Court.

D. **RESTITUTION:** The parties agree that the matter of restitution, if any, will be submitted to the Court for determination.

10. **DOUBLE JEOPARDY AND SUCCESSIVE PROSECUTION:** The United States Attorney for the Eastern District of Arkansas and the Public Integrity Section of the Criminal Division of the United States Department of Justice will bring no further charges against the defendant for any acts or conduct arising out of the events described in the Information, which is the subject of this action, unless the defendant breaches this Agreement and Addendum.

11. **RECORDS**: The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. Section 552, or the Privacy Act of 1974, 5 U.S.C. Section 552a.

12. **CIVIL CLAIMS BY THE GOVERNMENT**: Except to the extent otherwise expressly specified herein, this Agreement and Addendum does not bar or compromise any civil or administrative claim pending or that may be made against the defendant, including but not limited to tax matters.

13. **EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT AND ADDENDUM**:

A. Defendant acknowledges and understands that if the defendant violates any term of this Agreement and Addendum, engages in any further criminal activity prior to sentencing, or fails to appear for any subsequent proceeding including sentencing, the United States shall have, in addition to all other rights and remedies otherwise available, the right to:

- (1) terminate this Agreement and Addendum; or
- (2) proceed with this Agreement and Addendum and
 - (a) deny any and all benefits to which the defendant would otherwise be entitled under the terms of this Agreement and Addendum; and/or
 - (b) advocate for any sentencing enhancement that may be appropriate.

B. In the event the United States elects to terminate this Agreement and Addendum, the United States shall be released from any and all obligations hereunder. The defendant acknowledges and understands that the agreement of the United States to dismiss any charge is conditioned upon final resolution of this matter. If this Agreement and Addendum is terminated or if the defendant's conviction ultimately is overturned, then the United States retains the right to reinstate any and all dismissed charges and to file any and all charges which were not filed because of this Agreement and Addendum.

C. The defendant hereby knowingly and voluntarily waives any defense based upon the applicable statute of limitations and/or the Speedy Trial Act, for any charges reinstated or otherwise filed against the defendant as a result of defendant's breach of this Agreement and Addendum, so long as the United States initiates any otherwise time barred action within one year of termination or revocation of this Agreement and Addendum.

D. In the event that the Agreement and Addendum is terminated or if the defendant successfully moves to withdraw his plea, any statement made by the defendant in negotiation of, or in reliance on this Agreement and Addendum, including this Agreement, the stipulations in paragraph 5 of this Agreement, and the plea colloquy, but excepting statements made pursuant to any proffer agreement entered into between the parties:

- (1) may be used in the United States' case in chief and to cross examine the defendant should he testify in any subsequent proceeding; and/or
- (2) any leads derived therefrom may be used by the United States.

The defendant waives any and all rights to the contrary and shall assert no claim under the United States Constitution, any statute, or any rule of procedure or evidence to the contrary, including

Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(f). Defendant has been advised of his rights pursuant to Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(f) and waives these rights.

14. **PARTIES:** This Agreement and Addendum is binding only upon the United States Attorney's Office for the Eastern District of Arkansas, the Public Integrity Section of the Criminal Division of the United States Department of Justice, and the defendant. It does not bind any United States Attorney outside the Eastern District of Arkansas, nor does it bind any other federal, state or local prosecuting, administrative, or regulatory authority.

15. **MISCELLANEOUS:**

A. **MODIFICATION:** No term or provision contained herein may be modified, amended or waived except by express written agreement signed by the party to be bound thereby.

B. **HEADINGS AND CAPTIONS:** Subject headings and captions are included herein for convenience purposes only and shall not affect the interpretation of this Agreement and Addendum.

C. **WAIVER:** No waiver of a breach of any term or provision of this Agreement and Addendum shall operate or be construed as a waiver of any subsequent breach or limit or restrict any other right or remedy otherwise available. Any waiver must be expressly stated in writing signed by the party to be bound thereby.

D. **RIGHTS AND REMEDIES CUMULATIVE:** The rights and remedies of the United States expressed herein upon any breach hereunder by the defendant are cumulative and

not exclusive of any rights and remedies otherwise available to the United States in the event of any breach of this Agreement and Addendum by defendant.

E. JOINT NEGOTIATION: This Agreement and Addendum has been mutually negotiated by the parties hereto, and any uncertainty or ambiguity existing herein shall not be interpreted against any party by reason of its drafting of this Agreement and Addendum, but instead shall be interpreted according to the application of the general rules of interpretation for arms length agreements.

16. NO OTHER TERMS: This document and the Addendum completely reflect all promises, agreements and conditions made between the parties, constitute the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties, oral or written, with respect to the subject matter hereof.

17. APPROVALS AND SIGNATURES:

A. DEFENDANT: The defendant has read this Agreement and Addendum and carefully reviewed every part of it with his attorney. The defendant understands and voluntarily agrees to the terms and condition of this Agreement and Addendum. Further, the defendant has consulted with his attorney and fully understands his rights with respect to the provisions of the United States Sentencing Guidelines which may apply to this case. No other promises or inducements have been made to the defendant, other than those expressly contained in this Agreement and Addendum. In addition, no one has threatened or forced the defendant in any way to enter into this Agreement and Addendum. Defendant further acknowledges that defendant has entered into this Agreement and Addendum, consciously and deliberately, by defendant's free choice, and without duress, undue influence or otherwise being forced or

compelled to do so, and this Agreement and Addendum constitutes the legal, valid and binding obligation of the defendant, fully enforceable against defendant in accordance with its terms. Finally, the defendant is satisfied with the representation of his attorney in this case.

B. DEFENSE COUNSEL: Defense counsel acknowledges that she is the attorney for the defendant, and that she has fully and carefully discussed every part of this Agreement and Addendum with the defendant. Further, defense counsel has fully and carefully advised the defendant of the defendant's rights, of possible defenses, and of the consequences of entering into this Agreement and Addendum, including the possible consequences of not complying with this Agreement and Addendum. To counsel's knowledge, the defendant's decision to enter into this Agreement and Addendum is an informed and voluntary decision.

[END OF TEXT. DATE AND SIGNATURES ON PAGE 18.]

DATED this 9th day of January, 2015.

PATRICK HARRIS
Attorney for the United States,
Acting Under Authority Conferred By
Title 18, United States Code, Section 515



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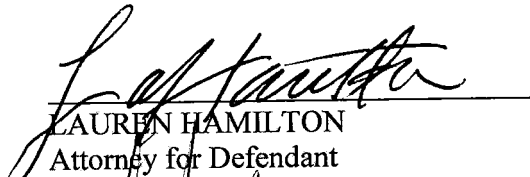
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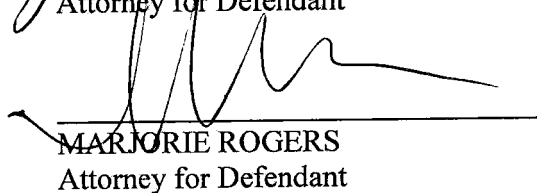
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