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**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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

13 UNITED STATES OF AMERICA,)	No. CR 08-0874 CRB
14 Plaintiff,)	
15 v.)	PLEA AGREEMENT
16 WILLIAM J. "BOOTS" DEL BIAGGIO, III,)	
17 Defendant.)	

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

23 The Defendant's Promises

24 I. I agree to plead guilty to Count One of the captioned Information charging me
25 with one count of securities fraud in violation of 18 U.S.C. § 1348. I agree that the elements of
26 that offense are as follows: (a) I knowingly executed a scheme or artifice to defraud another
27 person in connection with a security; (b) the security was of an issuer with a class of securities
28 registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) or that is

1 required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §
2 78o(d)), and; (c) I acted with the intent to defraud. I agree that the maximum penalties for that
3 count are as follows:

- | | | | |
|---|----|---------------------------------|---|
| 4 | a. | Maximum prison sentence | 25 years |
| 5 | b. | Maximum fine | \$250,000 (or twice the gross
6 gain or twice the gross loss,
7 whichever is greater) |
| 7 | c. | Maximum supervised release term | 3 years |
| 8 | d. | Mandatory special assessment | \$100 |
| 9 | e. | Restitution | As determined by the Court |

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

12 a. Between approximately August 2007 and April 2008, I applied for loans
13 from a number of persons and entities in connection with various personal ventures. In order to
14 obtain those loans and to give the appearance that I had the wherewithal to guarantee certain
15 financial obligations, I improperly obtained third party brokerage account statements reflecting
16 holdings in various securities. The issuers of the securities held in those accounts had a class of
17 securities registered under section 12 and were required to file reports under section 15(d) of the
18 Act. I caused those statements to be falsified so as to give the appearance that the accounts and
19 the securities were my property. I then transmitted or caused to be transmitted the falsified
20 statements to my lenders and guaranties. A list of the lenders and guaranties who received the
21 falsified statements and the outstanding principal balance of their respective loan or guaranty is
22 attached hereto at Exhibit A.

23 b. These fraudulent account statements materially misrepresented my true
24 financial condition. In so doing I knowingly and intentionally misstated material facts and failed
25 to state material facts necessary to make my statements not misleading. I knowingly and
26 intentionally executed this scheme and artifice with the intent to defraud another person in
27 connection with a security.

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1 3. I agree that, for the purpose of calculating and ordering restitution, the following
2 facts are also true:

3 a. Between approximately 2003 and April 2008, I was the President and
4 Chief Executive Officer of Sand Hill Capital Partners III ("Sand Hill III"), an investment fund
5 located in Menlo Park, California. During that time I raised approximately \$10.8 million from
6 outside investors for Sand Hill III. I used some of the funds invested to pay for my own personal
7 and business expenses unrelated to the business of Sand Hill III. A list of the Sand Hill III
8 investors and the outstanding principal balance of their investments as of the date that Sand Hill
9 III filed for bankruptcy protection is attached hereto at Exhibit B.

10 b. Between approximately December 1999 and January 31, 2005, I was the
11 sole Manager of BDB Management, LLC ("BDB I"), an investment fund located in Menlo Park,
12 California. During that time I raised approximately \$7.1 million from outside investors for BDB
13 I. I told those investors that BDB I would purchase stock of a publicly traded company to be held
14 for investment. I used the outside investors' funds, along with some of my own funds, to
15 purchase approximately 500,000 shares of stock in Heritage Commerce Corp. ("HCC"). I
16 deposited only approximately 180,000 shares of HCC into the BDB I account. The remaining
17 shares I placed in a separate account that I controlled. In approximately 2007, I margined all of
18 the HCC stock and used the proceeds for my own personal and business expenses unrelated to
19 the business of BDB I. Also in approximately 2007, I pledged the HCC stock as collateral to
20 secure money loaned to me for my own personal and business ventures unrelated to the business
21 of BDB I. The outside investors were not informed that I had so margined and pledged BDB I's
22 HCC stock. A list of the BDB I investors and the outstanding principal balance of their
23 investments as of the date that BDB I filed for bankruptcy protection is attached hereto at Exhibit
24 C.

25 c. Between approximately January 2007 and April 2008, I was the sole
26 Manager of BDB Management III, LLC ("BDB III"), an investment fund located in Menlo Park,
27 California. During that time I raised approximately \$2 million from outside investors. I
28 informed those investors that BDB III would purchase stock of a publicly traded company to be

1 held for investment. The outside investors' funds, together with additional funds of my own,
2 were used to purchase approximately 180,000 shares of stock in Pacific Premier Bancorp, Inc.
3 ("PPBI"). None of the PPBI shares was ever deposited into the BDB III account. Instead, I put
4 the shares in a separate account that I controlled. I subsequently margined all of the PPBI stock
5 and used the proceeds for my own personal and business expenses unrelated to the business of
6 BDB III. Also, I subsequently pledged the PPBI stock as collateral to secure money loaned to me
7 for my own personal and business ventures unrelated to the business of BDB III. The outside
8 investors were not informed that I had so margined and pledged BDB III's PPBI stock. A list of
9 the BDB III investors and the outstanding principal balance of their investments as of the date
10 that BDB III filed for bankruptcy protection is attached hereto at Exhibit D.

11 4. I agree to give up all rights that I would have if I chose to proceed to trial,
12 including the rights to a jury trial with the assistance of an attorney; to confront and
13 cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or
14 raise any other Fourth or Fifth Amendment claims; to any further discovery from the
15 government; and to pursue any affirmative defenses and present evidence. I also agree to waive
16 venue, if necessary, based on the charges filed in this case.

17 5. I agree to give up my right to appeal my conviction, the judgment, and orders of
18 the Court. I also agree to waive any right I may have to appeal any aspect of my sentence,
19 including any orders relating to the amount of loss, forfeiture, and/or restitution.

20 6. I agree to waive any right I may have to file any collateral attack on my
21 convictions or sentence, including a petition under 28 U.S.C. § 2255, or 28 U.S.C. § 2241, or
22 motion under 18 U.S.C. § 3582, at any time in the future after I am sentenced, except for a claim
23 that my constitutional right to the effective assistance of counsel was violated.

24 7. I agree not to ask the Court to withdraw my guilty plea at any time after it is
25 entered.

26 8. I agree that the Court will calculate my sentencing range under the Sentencing
27 Guidelines. I understand that the Court, while not bound to apply the Guidelines, must consult
28 those Guidelines and take them into account when sentencing, together with the factors set forth

1 in 18 U.S.C. § 3553(a). I understand that my acceptance of responsibility, cooperation with the
 2 criminal investigation, and cooperation with the bankruptcy trustee(s) in the Bankruptcy
 3 Proceedings may be included among the factors I may bring to the court's attention pursuant to
 4 18 U.S.C. § 3553(a). I agree that, regardless of the sentence (including restitution) that the Court
 5 imposes on me, I will not be entitled, nor will I ask, to withdraw my guilty plea. I also agree that
 6 the Sentencing Guidelines range will be calculated as follows and that, other than seeking a
 7 possible downward departure pursuant to 18 U.S.C. Section 3553(a), I will not ask for any other
 8 adjustment to or reduction in the offense level or for a downward departure or variance from the
 9 Guidelines range:

10	A.	Base Offense Level, U.S.S.G. § 2B1.1:	+7
11	B.	Specific offense characteristics	
12		1. Loss Amount, U.S.S.G. § 2B1.1(b)(1):	+20
13		2. Number of Victims, U.S.S.G. § 2B1.1(b)(2)(A):	+2
14		3. Gross Receipts from a Financial Institution, U.S.S.G. § 2B1.1(b)(13)(A):	+2
15		iii. Acceptance of Responsibility: If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled to a three-level reduction for 16 acceptance of responsibility, provided that I forthrightly admit my 17 guilt, cooperate with the Court and the Probation Office in any 18 presentence investigation ordered by the Court, and continue to manifest an acceptance of responsibility through and including the time of sentencing:	-3
19		Adjusted Offense Level:	28
20			

21 I agree that, regardless of any other provision in this Agreement, the government may and will
 22 provide to the Court and the Probation Office all information relevant to the charged offense and
 23 the sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines
 24 calculations above, the Court may conclude that a higher guideline range applies to me, and, if it
 25 does, I will not be entitled, nor will I ask, to withdraw my guilty plea.

26 9. I agree that the loss amount pursuant to U.S.S.G. § 2B1.1(b)(1) for Count One
 27 is \$19.25 million.

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1 10. In return for the government's promises set out below, I agree to pay
2 restitution for all the losses caused by the scheme or offense with which I was charged in this
3 case. I also agree to pay restitution for all the losses caused in connection with the conduct set
4 forth in Paragraph 3. I agree that the amount of restitution will be calculated, for each victim, as
5 the victim's outstanding principal loan or investment account balance as set out in Exhibits A-D,
6 less the amount recovered by the victim (up to the victim's outstanding principal loan or
7 investment account balance) in the following bankruptcy proceedings: *In Re Sand Hill Capital*
8 *Partners III*, Case No. 08-30989; *In Re William James Del Biaggio III*, Case No. 08-30991; *In*
9 *Re BDB Management, LLC*, Case No. 08-31001, and; *In Re BDB Management III, LLC*, Case
10 No. 08-31002 (the "Bankruptcy Proceedings"). I agree that the amount of restitution and of any
11 fine will be determined by the Court and that the amount determined by the Court will not entitle
12 me, nor will I ask, to withdraw my guilty plea. I agree that I will make a good faith effort to pay
13 any fine, forfeiture, or restitution I am ordered to pay. However, the government agrees that,
14 pursuant to 18 U.S.C. § 3664(j)(2), any restitution that I am ordered to pay to a victim may be
15 reduced by any amount later recovered as restitution or compensatory damages for the same loss
16 by the victim in any federal civil proceeding, including any related proceedings brought by the
17 Securities and Exchange Commission, or any state civil proceeding to the extent provided by the
18 law of the state. Before and after sentencing, I will, upon request of the Court, the government,
19 the U.S. Probation Office, or the trustees in any of the Bankruptcy Proceedings, provide accurate
20 and complete financial information, submit sworn statements and give depositions under oath
21 concerning my assets and my ability to pay, surrender assets I obtained as a result of my crime,
22 and release funds and property under my control in order to pay any fine, forfeiture, or restitution.
23 I agree to pay the special assessment at the time of sentencing.

24 11. I agree not to commit or attempt to commit any crimes before sentence is
25 imposed or before I surrender to serve my sentence; violate the terms of my pretrial release (if
26 any); not to intentionally provide false information or testimony to the Court, the Probation
27 Office, Pretrial Services, or the government; and not to fail to comply with any of the other
28 promises I have made in this Agreement. I agree that, if I fail to comply with any promises I

1 have made in this Agreement, then the government will be released from all of its promises, but I
2 will not be released from my guilty plea.

3 12. I agree that this Agreement contains all of the promises and agreements
4 between the government and me, and I will not claim otherwise in the future.

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

7 The Government's Promises

8 14. The government agrees not to file any additional charges against the defendant
9 that could be filed as a result of the investigation that led to the captioned information.

10 15. The government agrees to recommend the Guidelines calculations set out
11 above. The government reserves the right to argue for the amount of restitution and fine that the
12 government believes is appropriate.

13 16. The government agrees not to use any statements made by the defendant
14 pursuant to this Agreement against him, unless the defendant fails to comply with any promises
15 in this agreement.

16 17. Based on the information now known to it, the government will not oppose a
17 downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1
18 provided that the defendant forthrightly admits his guilt, cooperates with the Court and the
19 Probation Office in any presentence investigation ordered by the Court, and continues to manifest
20 an acceptance of responsibility through and including the time of sentencing. The government
21 acknowledges that, based on the information now known to it, the defendant has truthfully and
22 fully admitted his misconduct, for which he has expressed what the government believes to be
23 genuine remorse. Additionally, as of the date of the Agreement the defendant has provided
24 substantial assistance to law enforcement authorities in connection with this investigation, as
25 well as to the bankruptcy trustee(s) in the Bankruptcy Proceedings, which assistance will be
26 valuable in mitigating the losses caused by the scheme or offense with which the defendant is
27 charged.

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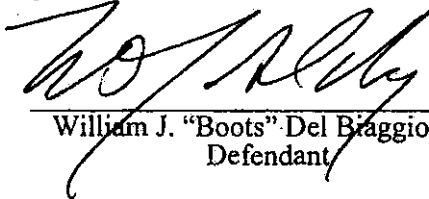
1 The Defendant's Affirmations

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

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

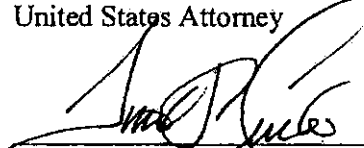
7 20. I confirm that my decision to enter a guilty plea is made knowing the charge
8 that has been brought against me, any possible defenses, and the benefits and possible detriments
9 of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
10 one coerced or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

11
12 Dated: 2/4/09


William J. "Boots" Del Braggio, III
Defendant

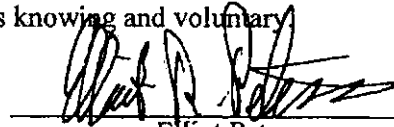
13
14
15 JOSEPH P. RUSSONIELLO
United States Attorney

16
17 Dated: 2-4-2009


Timothy P. Crudo
Assistant United States Attorney

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

23
24 Dated: 2/4/09


Elliot Peters
Attorney for Defendant