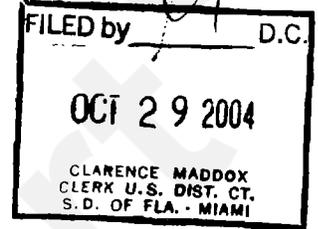


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION



CASE NO. 04-20752-CR-Seitz

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

ROBERT SCHLIEN,

Defendant.

PLEA AGREEMENT

The United States of America and **ROBERT SCHLIEN** ("defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to an information charging that since at least April 1993, and continuing through at least February 1996, in the Southern District of Florida, and elsewhere, the defendant did knowingly and willfully combine, conspire, confederate, agree and reach a tacit understanding with others, known and unknown, to commit offenses against the United States, that is, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of a national securities exchange, to knowingly and willfully use and employ, in connection with the purchase and sale of securities, namely the securities of Sky Scientific, Inc. and The Jockey Club, Inc., manipulative and deceptive devices and contrivances, in violation of Sections 10(b) and 32 of the

16/CA

Securities Exchange Act of 1934, Title 15, United States Code, Sections 78j(b) and 78ff, and Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission promulgated thereunder, Title 17, Code of Federal Regulations, Section 240.10b-5; all in violation of Title 18, United States Code, Section 371. The defendant further agrees to waive in open court his right to prosecution by indictment for this offense.

2. This agreement resolves the defendant's federal criminal liability in the Southern District of Florida growing out of any criminal conduct by the defendant known to the Office of the United States Attorney for the Southern District of Florida ("Office") as of the date of this plea agreement.

3. The defendant is aware that the sentence will be imposed in conformity with the Federal Sentencing Guidelines and Policy Statements ("Sentencing Guidelines"), and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the applicable guideline range and impose a sentence that is either more severe or less severe than the guideline range. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph 1, and that the defendant may not withdraw his guilty plea solely as a result of the sentence imposed.

4. The defendant also understands and acknowledges that the court may impose a statutory maximum term of imprisonment of five (5) years, followed by a term of supervised release. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to twice

the gross gain derived from the offense(s), twice the gross loss resulting from the offense(s) or \$250,000.00, whichever is greater, and may order restitution.

5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 4 of this agreement, a special assessment in the amount of \$100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

6. The defendant agrees to pay a fine in the amount of \$ 1,500,000.00 at the time of sentencing. Of the \$1,500,000.00 to be paid as a fine, \$750,000.00 will be provided by the defendant to this Office within ten (10) days of his execution of this agreement to be held by this Office in safekeeping until the defendant is sentenced in this matter and the \$1,500,000.00 fine is imposed by the court. The initial \$750,000.00 part payment of the fine shall be provided to this office in the form of a certificate of deposit ("certificate") with a 6-month maturity which the defendant shall purchase from a federally insured financial institution in the United States. The certificate shall be endorsed payable to the United States of America and provided to this Office in its original form. If this certificate matures before the defendant is sentenced and the agreed fine is imposed by the court, the defendant shall renew this certificate for an additional 6-month period or until such time as the defendant is sentenced and the fine is imposed. Alternatively, the defendant shall, at the time of sentencing, cash the certificate and use the monies to pay the agreed fine. Any interest generated by this certificate shall be imposed as an additional fine/interest against the defendant and will be payable to the United States of America. The remaining \$750,000.00 of the agreed \$1,500,000.00 fine will be paid by the defendant at the time of sentencing.

7. This Office reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement (as set forth in paragraphs 8 and 9 of this agreement), this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

8. The United States and the defendant agree that, although not binding on the probation office or the court, they will jointly recommend that the probation office and the court make the following findings and conclusions as to the sentence to be imposed:

a. Loss: That the relevant amount of actual, probable or intended loss under Section 2F1.1(b)(1) of the Sentencing Guidelines resulting from the offense(s) committed in this case is more than \$20,000,000.00, but no more than \$40,000,000.00;

b. More Than Minimal planning: That the defendant should receive a two-level increase as his offense conduct involved more than minimal planning and a scheme to defraud more than one victim under Section 2F1.1(b)(2) of the Sentencing Guidelines; and

c. Role in the offense: That the defendant should receive a four-level increase as an organizer and leader of criminal activity that involved five or more participants, pursuant to Section 3B1.1(a) of the Sentencing Guidelines.

d. Other guideline adjustments and enhancements: That the defendant should not receive any other guideline adjustments and/or enhancements except for those contained in this agreement.

9. The United States agrees that it will recommend at sentencing that the court reduce by three levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. However, the United States will not be required to make these sentencing recommendations if the defendant: (1) fails or refuses to make full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

10. The defendant agrees that he shall cooperate fully with this Office by:

(a) providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other court proceeding;

(b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office; and

(c) if requested by this Office, participating in affirmative investigative techniques, including, but not limited to, working in an undercover role to contact and negotiate with others suspected and believed to be involved in criminal misconduct, making telephone calls, tape recording conversations and/or introducing law enforcement officials to other individuals, all such activity to be conducted by the defendant only at the express direction and under the supervision of, and in compliance with, law enforcement officers and agents.

11. Additionally, the defendant understands and agrees that in providing information and testimony, he will not seek to protect any person or entity through false information or omission, and will not falsely implicate any person or entity. The defendant understands and agrees that he will not commit any further crimes. Notwithstanding this agreement, the defendant may be prosecuted under the federal perjury, obstruction of justice and false statements statutes for any materially false statement made at any time during his cooperation with the United States.

12. This Office reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the court at the time of sentencing. If in the sole and unreviewable judgment of this Office the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the court's downward departure from the sentence required by the Sentencing Guidelines, this Office may at or before sentencing make a motion pursuant to Section 5K1.1 of the Sentencing Guidelines, 18 U.S.C. §3553(e), or a Rule 35 motion subsequent to sentencing, reflecting that the defendant has provided substantial assistance and recommending sentence reduction. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require this Office to file such a motion and that this Office's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

13. The defendant understands and acknowledges that the court is under no obligation to grant a government motion pursuant to Title 18, United States Code, Section 3553(e), 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in paragraph 12 of this agreement, should the government exercise its discretion to file such a motion.

14. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742 to appeal any sentence imposed, including any fine and/or restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in 18 U.S.C. §3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. The defendant understands that, although defendant will be sentenced in conformity with the Sentencing Guidelines, by this agreement defendant waives the right to appeal the sentence on the basis that the sentence is the result of an incorrect application of the Sentence Guidelines.

15. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw his plea based upon the court's decision not to accept a sentencing

recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

16. The defendant agrees to toll the statute of limitations for any crimes with which he may be charged arising from the criminal activities at issue in this case (fraudulent offer, purchase and/or sale of the securities of Sky Scientific, Inc. and/or The Jockey Club, Inc. and the fraudulent use of proceeds generated therefrom) and not already time-barred as of the date of this agreement, until such time as the defendant has fully satisfied his obligation to provide cooperation, to the satisfaction of this Office, as specified in this agreement.

17. The defendant further understands that should he withdraw from this agreement prior to pleading guilty to the charge identified in paragraph 1 above, this Office will be released from its obligations under this agreement. In such a case, the defendant shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including, but not limited to, the criminal activities at issue in this case, perjury and obstruction of justice. Any such prosecution may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads therefrom may be used against the defendant directly in the Government's case in chief. Moreover, any such prosecution that is not time-barred by the applicable statute of limitations on the date this agreement is signed by the defendant may be commenced and the defendant agrees to waive any statute of limitations that would otherwise expire after the defendant signs this agreement. With respect to any such prosecution, the defendant further waives any right to claim that statements made by him before or after the execution of this agreement, including any statements made pursuant to any prior agreement between the defendant, this Office and/or any other United States Attorney's Office, or any leads from the defendant's statements,

should be suppressed under that prior agreement(s) or under Fed. R. Evid. 410, Fed. R. Crim. P. 11(e)(6), U.S.S.G. § 1B1.8, or otherwise. Additionally, the fine amount, including any interest earned, agreed to be paid by the defendant, as previously acknowledged in paragraph 6 above, which is to be held by this Office will continue to be held by this Office pending prosecution of the defendant and will ultimately be used to satisfy any order of forfeiture, restitution and/or fine imposed by the court, if applicable.

18. The defendant further understands that should he commit or attempt to commit any additional federal, state, or local crimes, or should it be established that the defendant has intentionally given materially false, incomplete, or misleading testimony or information or otherwise has violated any provision of this agreement, this Office will be released from its obligations under this agreement but the defendant may not withdraw the guilty plea entered into pursuant to this agreement. In such a case, the defendant shall thereafter be subject to prosecution for any federal criminal violation of which this office has knowledge, including, but not limited to, the criminal activities at issue in this case, perjury and obstruction of justice. Any such prosecution may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads therefrom may be used against the defendant directly in the Government's case in chief. Moreover, any such prosecution that is not time-barred by the applicable statute of limitations on the date this agreement is signed by the defendant may be commenced and the defendant agrees to waive any statute of limitations that would otherwise expire after the defendant signs this agreement. With respect to any such prosecution, the defendant further waives any right to claim that statements made by him before or after the execution of this agreement, including any statements made pursuant to any prior agreement between the defendant, this Office and/or any other United States Attorney's Office,

or any leads from the defendant's statements, should be suppressed under that prior agreement(s) or under Fed. R. Evid. 410, Fed. R. Crim. P. 11(e)(6), U.S.S.G. § 1B1.8, or otherwise. Additionally, the defendant may not withdraw the fine amount, including any interest earned, agreed to be paid by the defendant, as previously acknowledged in paragraph 6 above, which is to be held by this Office pending imposition of the fine by the court against the defendant at the time of sentencing.

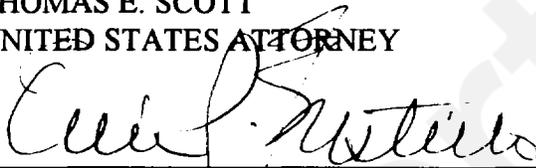
19. This agreement does not prohibit the United States, any agency thereof (including the United States Securities and Exchange Commission and/or the Internal Revenue Service), or any third party from initiating or prosecuting any civil proceeding against the defendant. However, prior to the date of sentencing, the defendant shall to the extent necessary: (1) file accurate amended personal returns from 1993 to the present; (2) provide all appropriate documentation to the Internal Revenue Service in support of such returns, upon request; (3) pay to the Internal Revenue Service all taxes and penalties owed on those returns or, if unable to do so, make satisfactory repayment arrangements with the Internal Revenue Service; and (4) fully cooperate with the Internal Revenue Service and comply with the tax laws of the United States.

20. This agreement is limited to this Office and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement and the defendant's cooperation to the attention of other prosecuting offices, if requested by the defendant to do so.

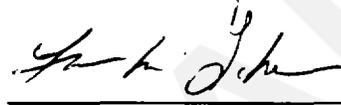
21. This agreement constitutes the full and complete agreement between the defendant and this Office and supersedes any previous agreement between them. No additional promises, agreements, or conditions have been entered into other than those set forth in this agreement, and none will be entered into unless in writing and signed by the parties.

THOMAS E. SCOTT
UNITED STATES ATTORNEY

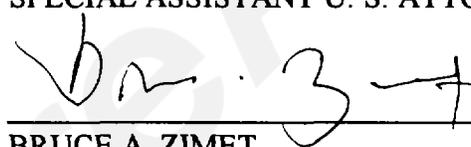
Date: 7-14-99

By: 
ERIC I. BUSTILLO
ASSISTANT UNITED STATES ATTORNEY

Date: 7/14/99

By: 
FREDERICK M. LEHRER
SPECIAL ASSISTANT U. S. ATTORNEY

Date: 6/29/99

By: 
BRUCE A. ZIMET
ATTORNEY FOR DEFENDANT

Date: 6/29/99

By: 
ROBERT SCHLIEN
DEFENDANT



U.S. Department of Justice
United States Attorney
Southern District of Florida
Economic Crimes Section

Eric I. Bustillo
Deputy Chief
Economic Crimes Section

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Miami, Florida 33132-2111

Phone: (305) 961-9269
Fax: (305) 530-6168

August 18, 2004

Bruce A. Zimet, Esquire
Bruce A. Zimet, P.A.
One Financial Plaza, Suite 2612
Fort Lauderdale, Florida 33394

Re: *United States v. Robert Schlien*

Dear Mr. Zimet:

Pursuant to our recent discussions, in anticipation of the filing of the agreed-to Information in the above-referenced matter, this letter is to address certain issues which were not covered in the plea agreement previously entered into by your client with this office because they have only recently come up in light of the U.S. Supreme Court's decision in *Blakely v. Washington*, __ U.S. __, 124 S.Ct. 2531 (2004). (A copy of the original plea agreement (hereinafter "original plea agreement") executed by your client is attached to this letter.) Specifically, the original plea agreement is hereby amended as follows:¹

Paragraph 3 of the original plea agreement is hereby deleted and in place thereof is inserted the following:

"3. The defendant is aware that the sentence will be imposed in conformity with the Federal Sentencing Guidelines and Policy Statements ("Sentencing Guidelines"), and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the applicable guideline range and impose a sentence that is either more severe or less severe than the guideline range. *The defendant waives any constitutional challenge to the Sentencing*

¹ The amending language is shown in italics.

Guidelines, waives indictment and trial by jury on all findings relevant to sentencing, and agrees that the court may make all such findings by a preponderance of the evidence based on any reliable evidence, including hearsay. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph 1, and that the defendant may not withdraw his guilty plea solely as a result of the sentence imposed. The defendant acknowledges that he has discussed this waiver and its consequences fully with his attorney and that he understands the nature and consequences of the waiver.”

Paragraph 14 of the original plea agreement is hereby deleted and in place thereof is inserted the following:

“14. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742 to appeal any sentence imposed, including any fine and/or restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the court establishes at sentencing. *This appeal waiver includes a waiver of the right to appeal the sentence on the ground that the Sentencing Guidelines are in any respect unconstitutional, or on the grounds that any fact found by the court at sentencing was not alleged in the indictment/information, admitted by the defendant, found by a jury, or found beyond a reasonable doubt.* The defendant further understands that nothing in this agreement shall affect the government’s right and/or duty to appeal as set forth in 18 U.S.C. §3742(b). However, if the United States appeals the defendant’s sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights, *except for the waiver of appeal on the ground*

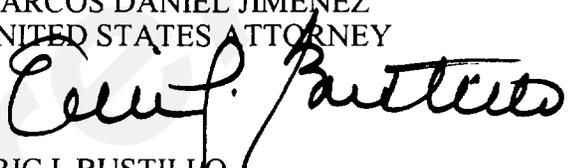
that the Sentencing Guidelines are in any respect unconstitutional and on the grounds that any fact found by the court at sentencing was not alleged in the indictment/information, admitted by the defendant, found by a jury, or found beyond a reasonable doubt. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with the United States, to request that the district court enter a specific finding that the defendant's waiver of his right to appeal the sentence imposed in this case was knowing and voluntary."

In all other respects, the original plea agreement shall remain as originally executed. No further amendments to the original plea agreement will be entered into unless in writing and signed by the parties. Please sign and have your client sign this letter in the spaces indicated below. Once the letter has been signed, please return the original to me, retaining copies for yourself and your client. The original letter will be attached to, and made a part of, the original executed plea agreement.

Very truly yours,

MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY

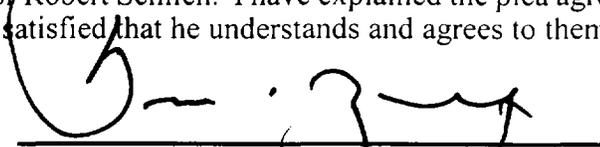
By:


ERIC I. BUSTILLO
ASSISTANT UNITED STATES ATTORNEY
DEPUTY CHIEF, ECONOMIC CRIMES SECTION

ACKNOWLEDGMENT

I, Bruce A. Zimet, am the attorney for Robert Schlien. I have explained the plea agreement amendments set forth above to him and am satisfied that he understands and agrees to them.

Date: 9/23/04



BRUCE A. ZIMET, ESQUIRE
ATTORNEY FOR ROBERT SCHLIEN

I, Robert Schlien, understand the plea agreement amendments listed above, and I agree to said amendments to my previously executed plea agreement.

Date: 9/23/04



ROBERT SCHLIEN

Enclosure