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FILED
SEP 27 2006
CLERK OF DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

IN THE FOURTH JUDICIAL DISTRICT COURT
STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

JOSHUA POULSON,

Defendant.

PLEA IN ABEYANCE AGREEMENT
(Plea of Guilty)

Case No. 081400262

Judge Samuel D. McVey

I, Joshua Poulson, the Defendant, hereby plead guilty to the charge(s) of:

<u>Offense</u>	<u>Degree</u>	<u>Max Punishment</u>
Count 1: Securities Fraud	F2	1-15 years; \$10,000 + 85%

I hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights:

I have received a copy of the Information against me. I have read it, or had it read to me, and I understand the nature and the elements of crime(s) to which I am pleading guilty.

Section 1: Elements of Offenses

The elements of the crime(s) to which I am pleading guilty are:

COUNT 1: On or about September 26, 2006, in Utah County, Utah, in connection with the offer, sale, or purchase of a security, did, directly or indirectly, (1) employ a device, scheme, or artifice

to defraud; (2) make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engage in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person, and (i) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000 or more; or (ii)(A) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than \$10,000; and (B) in connection with that violation, the violator knowingly accepted any money representing: (I) equity in a person's home; (II) a withdrawal from any individual retirement account; or (III) a withdrawal from any qualified retirement plan as defined in the Internal Revenue Code.

Section 2: Admitted Facts

I understand that by pleading guilty, I am admitting that I committed the foregoing crime(s). I admit that the following facts describe my conduct and the conduct of other persons for which I am criminally liable. These facts provide a basis for the Court to accept my guilty pleas and prove the elements of the crime(s) to which I am pleading guilty:

In August and September of 2006, in Utah County, I, Joshua Poulson, convinced Stuart Thayn and his wife Renee to get a home equity loan of \$90,000 and had them make a check in that amount payable to my company, Poulson Investing, with the representation that the money would be invested in real estate and give them a 2% rate of monthly return. I never provided a prospectus or offering circular in connection with this transaction. I also represented that the Thayns could recover the principal investment of \$90,000 within 90 days upon request. Poulson Investing did not then nor ever has it invested funds in real property. Despite repeated requests to do so, I have not returned the \$90,000.

Section 3: Waiver of Constitutional Rights

I am entering this plea agreement voluntarily. I understand that I have the following rights under the constitutions of Utah and the United States. I also understand that if I plead guilty I will give up all the following rights:

Counsel: I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me. I understand that I might later, if the judge determined that I was able, be required to pay for the appointed lawyer's service to me. I have not waived my right to counsel and my attorney is BRYAN R. FARRIS

I certify that I have read this plea agreement and that I understand the nature and elements of the charges and crimes to which I am pleading guilty. I also understand my rights in this case and other cases and the consequences of my guilty plea(s). My attorney and I have fully discussed this plea agreement, my rights, and the consequences of my guilty pleas.

Jury Trial. I know that I have a right to a speedy and public trial by an impartial (unbiased) jury and that I will be giving up that right by pleading guilty.

Confrontation and cross-examination of witnesses. I know that if I were to have a jury trial, a) I would have the right to see and observe the witnesses who testified against me and b) my attorney, or myself if I waived my right to an attorney, would have the opportunity to cross-examine all of the witnesses who testified against me.

Right to compel witnesses. I know that if I were to have a jury trial, I could call witnesses if I chose to and I would be able to obtain subpoenas requiring the attendance and testimony of those witnesses. If I could not afford to pay for the witnesses to appear, the State would pay those costs.

Right to testify and privilege against self-incrimination. I know that if I were to have a jury trial, I would have the right to testify on my own behalf. I also know that if I chose not to testify, no one could make me testify or make me give evidence against myself I also know that if I chose not to testify, the jury would be told that they could not hold my refusal to testify against me.

Presumption of innocence and burden of proof. I know that if I do not plead guilty, I am presumed innocent until the State proves that I am guilty of the charged crime(s). If I choose to fight the charges against me, I need only plead "not guilty," and my case will be set for a trial. At a trial, the State would have the burden of proving each element of the charge(s) beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous, meaning that each juror would have to find me guilty.

I understand that if I plead guilty, I give up the presumption of innocence and will be admitting that I committed the crime(s) stated above.

Appeal. I know that under the Utah Constitution, if I were convicted by a jury or judge, I would have the right to appeal my conviction and sentence. If I could not afford the costs of an appeal, the State would pay those costs for me. I understand that I am giving up my right to appeal my conviction if I plead guilty.

I know and understand that by pleading guilty, I am waiving and giving up all the statutory and constitutional rights as explained above.

Turnbow Challenge. I know that according to the Utah Court of Appeals, a plea in abeyance case "remains open until the trial court takes further action to either enter a conviction for the pleaded-to crime or a lesser crime, or dismisses the case." State v. Turnbow, 21 P.3d 249 (Utah Ct. App 2001). A court may thus keep this plea in abeyance case open until it determines whether I violated the terms of the agreement during the term of the plea in abeyance, even though the set term has elapsed. I understand that by entering into this agreement with the State, I am waiving my right to challenge an order to show cause plea in abeyance violation which is set after the end of the set term, on jurisdictional grounds.

Section 4: Consequences of Entering a Guilty Plea

Potential penalties. I know the maximum sentence that may be imposed for each crime to which I am pleading guilty. I know that by pleading guilty to a crime that carries a mandatory penalty, I will be subjecting myself to serving a mandatory penalty for that crime. I know my sentence may include a prison term, fine, or both.

I know that in addition to a fine, an eighty-five percent (85%) surcharge will be imposed together with a security fee of \$25.00 for each offense to which I have plead guilty. I also know that I may be ordered to make restitution to any victim(s) of my crimes, including any restitution that may be owed on charges that are dismissed as part of a plea agreement. The restitution agreed to in this case is \$75,225. Payment of full restitution, which will also include 12% annual interest from the date of the investment (September 26, 2006) will be made according to the following schedule:

First 12 months: \$15,000 at the rate of \$1,250 per month;

Second 12 months: \$25,000 at the rate of \$2,0833.33 per month;

Final 12 months: Full remaining balance paid in equal monthly installments.

Consecutive/concurrent prison terms. I know that if there is more than one crime involved, the sentences may be imposed one after another (consecutively), or they may run at the same time (concurrently). I know that I may be charged an additional fine for each crime that I plead to. I also know that if I am on probation or parole, or awaiting sentencing on another offense of which I have been convicted or which I have plead guilty, my guilty plea(s) now may result in consecutive sentences being imposed on me. If the offense to which I am now pleading guilty occurred when I was imprisoned or on parole, I know the law requires the court to impose consecutive sentences unless the court finds and states on the record that consecutive sentences would be inappropriate.

Section 5: Plea Bargain

My guilty plea is the result of a plea bargain between myself and the prosecuting attorney. All the promises, duties, and provisions of the plea bargain are fully contained in this plea agreement, including those explained below.

For my guilty plea the State has agreed to recommend the Court hold my guilty plea in abeyance for 36 months from my signing this agreement and that the Court not enter judgment against or impose sentence upon me so long as I fully and strictly comply with the following (the terms of which I agree to):

a. To not violate any federal, state, county or municipal laws, or be convicted of violating any of those laws, and to notify the Utah County Attorney's Office at 100 East Center Street, Suite 2100, Provo, Utah 84606, in writing, of such an arrest for any alleged violation, any charges being filed and served upon me for any alleged violation, any citation being issued me for any alleged violation, or a conviction for the same within 72 hours.

b. To keep the Court and the Utah County Attorney's Office notified at all times, in writing, of my current address; and to make notification within 72 hours upon my change of residence or mailing address. My current address and telephone number is:

9907 Chelan Ct.
Pasco, WA 99301
(509) 380-0352

c. To timely appear for all hearings the Court schedules for my case whether notice be given in person, by mail, by formal service of a summons, or by warrant of arrest.

d. To pay a plea in abeyance fee, including surcharge, in the amount of \$555.00; to be paid in full to the Clerk of the 4th District Court, 125 N. 100 W., Provo, Utah 84601, at the rate of ^{due} ~~at~~ 30 days before the plea in abeyance period ~~to~~ expires.

least \$ _____ per month due by end of each month starting in the month of _____, 200__.

e. That by entering this plea agreement, in which the Court will hold my guilty plea in abeyance, ***I am knowingly and intelligently waiving my right to a speedy trial and my right to be sentenced not less than two nor more than forty-five days*** after the Court accepts my guilty plea.

f. That by entering this plea agreement ***I understand that if I desire to withdraw my guilty plea I must have good cause and I must do so in writing with the Court. I also understand that any motion to withdraw my plea must be filed with the Court within 30 days of the date I entered my plea or I will not be able to withdraw my plea.***

g. To ensure my compliance with this agreement ***I agree to appear in person before the Court when requested to review my progress*** and to testify under oath as to my compliance if requested by the State or the Court. I agree that notice of such review hearings will complete if sent to the last address I have provided in accordance with above term "b."

h. I promise to enter into a Stipulation and Consent Order with the Utah Division of Securities in order to conclude the Division's administrative action against me, my wife, and my company. I will do so within one month of entering into this Plea in Abeyance agreement.

i. I also promise to cooperate fully with any and all State and Federal investigation(s) of TSS Investment and/or Sonny Jensen, including providing testimony, if necessary, and documents.

If I do strictly comply with all terms and conditions set forth in this agreement and those ordered by the Court, I understand that at the end of the abeyance period I may make a motion to the Court to: (*Select one option*) 1) X dismiss all the charges filed in the information in this case, or 2) ___ reduce the charges in count (s) _____ to _____

_____. The State will not oppose that motion.

I understand and agree that violation of any of the terms of this agreement, as contained above, will constitute a material breach of this agreement.

This agreement will remain in effect until either 1) the Defendant is found in violation of the agreement or 2) the Defendant's Motion to Dismiss is granted.

Section 6: Consequences of not Complying with the Terms of this Agreement

If I do not strictly comply with all terms and conditions set forth in this agreement, I understand that the Court, at its own initiative or at the State's request, may issue an order requiring me to appear before the Court at a designated time and place to show cause why the Court should not find I have violated the terms of this plea agreement.

If the defendant violates the terms of this abeyance agreement in any respect, including failure to timely pay restitution, and the State seeks to terminate the abeyance agreement, I understand that the Court, at its own initiative or at the State's request, may issue an order requiring me to appear before the Court at a designated time and place to show cause why the Court should not find I have violated the terms of this plea agreement, why this plea agreement should not be terminated, and why the Court should not enter a judgment of conviction and impose sentence upon me. I also understand that the Court may issue, on its own initiative or at the State's request, such orders as will insure my appearance at Court including a warrant for arrest which may or may not include bail.

Finder of fact and proof required. I understand and agree that should a hearing be set to determine whether or not I have violated the terms of this agreement that the hearing, and any finding of fact necessary to determine whether this agreement has been violated, will be conducted by the Judge assigned to my case *and not a jury*. I further understand and agree that

the standard of evidence which shall apply to any said hearing to determine whether or not I have violated the terms of this agreement shall be by *clear and convincing evidence and not "proof beyond a reasonable doubt."*

Hearing to determine compliance in my absence. I understand and agree that should a hearing be set to determine whether or not I have violated the terms of this agreement that the hearing may take place in my absence if upon motion of the State the Court finds that reasonable efforts have been made by the State or the Court to assure my presence at the hearing to no avail. Notice of any such motions and orders shall be sent to my last stated address which I provide to the Court and to the County Attorney's Office as per this agreement and such notice shall be deemed as a reasonable effort to contact me.

Trial judge not bound by recommendations at sentencing, should it occur. I know that at the time of sentencing, should sentencing occur, for the charges I have hereby pled guilty to that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing, made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the judge may do are not binding on the judge. I further understand that the State has made no agreements or recommendations as to sentencing, should it occur.

Section 7: Defendant's Certification of Voluntariness

I am entering this plea of my own free will and choice. No force, threats, of unlawful influence of any kind have been made to get me to plead guilty. No promises except those contained in this plea agreement have been made to me.

I have read this plea agreement, or I have had it read to me by an attorney, and I understand its contents and adopt each plea agreement in it as my own. I know that I am free to change or

delete anything contained in this plea agreement, but I do not wish to make any changes because all of the statements are correct.

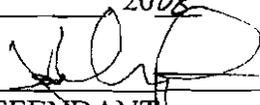
I am satisfied with the advice and assistance of my attorney.

I am 31 years of age. I have attended school through ~~the~~ ^{bachelor's degree.} ~~grade.~~ I can read and understand the English language. If I do not understand English, an interpreter has been provided to me. I was not under the influence of any drugs, medication, or intoxicants which would impair my judgment when I decided to plead guilty. I am not presently under the influence of any drug, medication, or intoxicants which impair my judgment.

I believe myself to be of sound and discerning mind and to be mentally capable of understanding these proceedings and the consequences of my plea. I am free of any mental disease, defect, or impairment that would prevent me from understanding what I am doing or from knowingly, intelligently, and voluntarily entering my plea.

Dated this 15 day of Sept.

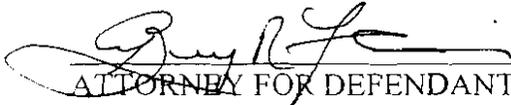
2008



DEFENDANT

Certificate of Defense Attorney

I certify that I am the attorney for Joshua Poulson, the defendant above, and that I know he/she has read the plea agreement or that I have read it to him/her; I have discussed it with him/her and believe that he/she fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crime(s) and the factual synopsis of the defendant's criminal conduct are correctly stated; and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.



ATTORNEY FOR DEFENDANT
Bar No. 8979

Certificate of Prosecuting Attorney

I certify that I am the attorney for the State of Utah in the case against Joshua Paulson, the defendant. I have reviewed this plea agreement and find that the factual basis of the defendant's criminal conduct which constitutes the offense(s) is true and correct. No improper inducements, threats, or coercion to encourage a plea has been offered defendant. The plea negotiations are fully contained in this plea agreement or as supplemented on the record before the Court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense(s) for which the plea(s) is/are entered and that the acceptance of the plea(s) would serve the public interest.

John J. Nelson

DEPUTY UTAH COUNTY ATTORNEY

Bar No. 11736

Order

Based on the facts set forth in the foregoing plea agreement and the certification of the defendant and counsel, and based on any oral representations in court, the Court witnesses the signatures and finds that the defendant's guilty plea(s) is/are freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED that the defendant's guilty plea(s) to the crime(s) set forth in the plea agreement be accepted and entered.

Dated this 15 day of September, 2008.


DISTRICT COURT JUDGE