

FILED

JAN - 6 2010

4TH JUDICIAL DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

**IN THE FOURTH JUDICIAL DISTRICT COURT
STATE OF UTAH**

<p>STATE OF UTAH,</p> <p>Plaintiff,</p> <p>vs.</p> <p>DANIEL JOHN MERRIMAN,</p> <p>Defendant.</p>	<p>STATEMENT OF DEFENDANT IN SUPPORT OF GUILTY PLEA AND CERTIFICATE OF COUNSEL</p> <p>Case No. 091401811</p> <p>Judge Lynn W. Davis</p>
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I, , hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights:

Notification of Charges

Crime & Statutory Provisions	Degree	Punishment Min/Max and/or Minimum Mandatory
Count 1. Securities Fraud §61-1-1	F2	1-15 years in the Utah State Prison, \$10,000 fine and 85% surcharge
Count 2. Securities Fraud §61-1-1	F2	1-15 years in the Utah State Prison, \$10,000 fine and 85% surcharge
Count 3. Securities Fraud §61-1-1	F3	0-5 years in the Utah State Prison, \$5,000 fine and 85% surcharge

crimes.) I stipulate and agree (or, if I am pleading no contest, I do not dispute or contest) 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 (or no contest) plea(s) and prove the elements of the crime(s) to which I am pleading guilty (or no contest):

Count 1. In or about October 2005, Wesley and Sally Walters, invested \$50,000 with Daniel Merriman from Sally's IRA to be used in a real estate project in Maine with an expected return on their investment of approximately 18%. The money was not used for a real estate project. Mr. Merriman was a resident of Utah County at the time of this investment.

Count 2. In or about August 2006, Daniel Merriman discussed with Luella Day, in Utah County, Utah, the prospect of Luella Day investing \$1,222,000 with Merriman. Merriman promised Day he would return the principal plus \$90,360 within 1 year. Mr. Merriman received \$1,222,000 from Ms. Day. In reviewing the bank records for Mr. Merriman, in which the investment was placed, Merriman used the funds to pay for expenses he failed to disclose to Luella Day, which expenses were material omissions on the part of Mr. Merriman.

Count 3. In or about December 2006, Mr. Merriman paid Luella Day the first interest payment on her initial investment. The payment was for \$24,440. Around this same time, Mr. Merriman informed Luella Day about a ~~real-estate~~ investment opportunity with a promise of a "good return" and solicited \$50,000 from Day. On or about December 29, 2006, Luella Day gave Mr. Merriman \$50,000. In reviewing the bank records in which the investment was placed, Mr. Merriman used the money for purposes other than investing in ~~real-estate~~. *the investment discussed with Ms. Day, which was a full material omission on the part of Mr. Merriman.*

Waiver of Constitutional Rights

I am entering this/these plea(s) 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 (or no contest) 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)(have) waived my right to counsel. If I have waived my right to counsel, I have done so knowingly, intelligently and voluntarily for the following reasons:

If I have waived my right to counsel, I certify I have read this statement and that I understand the nature and elements of the charges and crimes to which I am pleading guilty (or no contest). I also understand my rights in this case and other cases and the consequences of my guilty (or no contest) plea(s).

If I have not waived my right to counsel, my attorney is *Sonny J. Olsen* ~~M. James Brady~~. My attorney and I have fully discussed this statement, my rights and the consequences of my guilty (or no

contest) plea(s).

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 (or no contest).

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 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 (or no contest), 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 (or no contest), 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 (or no contest). I understand that if I wish to appeal my sentence, I must file notice of appeal within 30 days after my sentence is entered.

I know and understand that by pleading guilty (or no contest), I am waiving and giving up all the statutory and constitutional rights as explained above.

Consequences of Entering a Guilty (or No Contest) Plea

Potential penalties. I know the maximum sentence that may be imposed for each crime to which I am pleading guilty (or no contest). I know that by pleading guilty (or no contest) 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 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.

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.

Plea Agreement. My guilty (or no contest) 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:

- The State of Utah will recommend to the Court that these convictions run concurrently with each other. There is no other sentencing agreement.
- Defendant agrees to pay restitution of \$1,247,560 to LuElla Day.
- Defendant agrees to pay restitution of \$50,000 to Sally and Wesley Walters.

Trial judge not bound. I know 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.

Defendant's Certification of Voluntariness

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

I have read this statement, 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 39 years of age. I have attended school through the 16th grade. I can read

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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.

I understand that if I want to withdraw my guilty (or no contest) pleas(s), I can file a written motion to withdraw my plea(s) before sentence is announced. I understand that for a plea in abeyance, a motion to withdraw from the plea agreement must be made within 30 days of pleading guilty or no contest. I will only be allowed to withdraw my plea if I show that it was not knowingly and voluntarily made. I understand that any challenge to my plea(s) made after sentencing must be pursued under the Post-Conviction Remedies Act in Title 78, Chapter 35a, and Rule 65C fo the Utha Rules of Civil Procedure.

Dated this 6th day of January, 2010.

Daniel John Merriman
DEFENDANT

Certificate of Defense Attorney

I certify that I am the attorney for DANIEL JOHN MERRIMAN, 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.

[Signature]
ATTORNEY FOR DEFENDANT
Bar No. 11308

Certificate of Prosecuting Attorney

I certify that I am the attorney for the State of Utah in the case against DANIEL JOHN MERRIMAN, 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.

[Signature]

DEPUTY UTAH COUNTY ATTORNEY

Bar No. 8001

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 (or no contest) plea(s) is/are freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED that the defendant's guilty (or no contest) plea(s) to the crime(s) set forth in the plea agreement be accepted and entered.

Dated this 6 day of Jan. 2010

