

**ORIGINAL**

## **GUILTY PLEA and PLEA AGREEMENT**

United States Attorney  
Northern District of Georgia

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CRIMINAL NO. 1:09-CR-554

*See  
b/m* 

The Acting United States Attorney for the Northern District of Georgia and Defendant ~~JEFFERY~~ L. LEVINE enter into this plea agreement as set forth below in Part IV pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure. JEFFERY L. LEVINE, Defendant, having received a copy of the above-numbered, Criminal Information which charges false entries in the books, reports and statements of Omni National Bank, in violation of Title 18, United States Code, Sections 1005 and 2, hereby waives indictment by Grand Jury, and having been arraigned, pleads GUILTY to the Information.

### **I. ADMISSION OF GUILT**

The Defendant admits that he is pleading guilty because he is in fact guilty of the crime charged in the Information.

### **II. ACKNOWLEDGMENT & WAIVER OF RIGHTS**

The Defendant understands that by allowing the Government to file this above-numbered Criminal Information, he is giving up his right to have his case presented to a Grand Jury to determine whether there is probable cause to charge him with this felony violation. The Defendant further understands that by pleading guilty, he is giving up the right to plead not guilty and the right to be tried by a jury. At a trial, the Defendant would have the right to an attorney, and if the Defendant could not afford an attorney, the Court would appoint one to represent the Defendant at trial and at every stage of the proceedings. During the trial, the Defendant would be presumed

innocent and the Government would have the burden of proving him guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the witnesses against him. If the Defendant wished, he could testify on his own behalf and present evidence in his defense, and he could subpoena witnesses to testify on his behalf. If, however, the Defendant did not wish to testify, that fact could not be used against him, and the Government could not compel him to incriminate himself. If the Defendant were found guilty after a trial, he would have the right to appeal the conviction.

The Defendant understands that by pleading guilty, he is giving up all of these rights and there will not be a trial of any kind.

By pleading guilty, Defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that could have been filed.

The Defendant acknowledges that he is aware that Title 12, United States Code, Section 1829, generally prohibits any person such as the defendant who has been convicted of a criminal offense, including a violation of 18 U.S.C. §§1005 and 2, involving dishonesty or a breach of trust from direct or indirect affiliation, ownership, control, or participation in the conduct of the affairs of an insured depository institution (that is, a federally insured bank or savings and loan institution).

The Defendant also understands that he ordinarily would have the right to appeal his sentence and, under some circumstances, to attack the conviction and sentence in post-conviction proceedings. By entering this Plea Agreement, the Defendant will be waiving some or all of those rights to appeal and to collaterally attack his conviction and sentence, as specified below.

Finally, the Defendant understands that, to plead guilty, he may have to answer, under oath,

questions posed to him by the Court concerning the rights that he is giving up and the facts of this case, and the Defendant's answers, if untruthful, may later be used against him in a prosecution for perjury or false statements.

### **III. ACKNOWLEDGMENT OF PENALTIES**

The Defendant understands that, based on his plea of guilty, he will be subject to the following maximum and mandatory minimum penalties:

- (a) Maximum term of imprisonment: 30 years.
- (b) Mandatory minimum term of imprisonment: None.
- (c) Term of supervised release: Up to 5 year(s).
- (d) Maximum fine: \$1,000,000.
- (e) Full restitution to all victims of the offense(s) and relevant conduct.
- (f) Mandatory special assessment: \$100.00, due and payable immediately.

The Defendant understands that, before imposing sentence in this case, the Court will be required to consider, among other factors, the provisions of the United States Sentencing Guidelines which are advisory and that, under certain circumstances, the Court has the discretion to depart or vary from those Guidelines. The Defendant further understands that the Court may impose a sentence up to and including the statutory maximum as set forth in this paragraph and that no one can predict his exact sentence at this time.

### **IV. PLEA AGREEMENT**

The Defendant, his counsel, and the Acting United States Attorney for the Northern District of Georgia ("the Government"), as counsel for the United States, subject to approval by the Court, have agreed upon a negotiated plea in this case, the terms of which are as follows:

**No Additional Charges**

The Acting United States Attorney for the Northern District of Georgia agrees not to bring further criminal charges against the Defendant related to the crime charged in this Criminal Information or Defendant's employment at Omni National Bank, so long as the Defendant has disclosed such other conduct to the United States Attorneys Office prior to entering this guilty plea. The Defendant understands that this provision does not bar prosecution by any other federal, state, or local jurisdictions.

**Sentencing Guidelines Recommendations**

**Acceptance of Responsibility**

The Government will recommend that the Defendant receive the two-level adjustment for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, and the additional one-level adjustment if the offense level is 16 or higher. However, the Government will not be required to recommend acceptance of responsibility if, after entering this Plea Agreement, the Defendant engages in conduct inconsistent with accepting responsibility. Thus, by way of example only, should the Defendant falsely deny or falsely attempt to minimize Defendant's involvement in relevant offense conduct, give conflicting statements about Defendant's involvement, fail to pay the special assessment, fail to meet any of the obligations set forth in the Financial Cooperation Provisions set forth below, or participate in additional criminal conduct, including unlawful personal use of a controlled substance, the Government will not be required to recommend acceptance of responsibility.

**Specific Sentencing Recommendation**

The Government and the Defendant, after consideration of the Sentencing Guidelines, the factors set forth in 18 U.S.C. § 3553(a) and the substantial assistance provided by the Defendant, jointly recommend that the Defendant be sentenced to a term of 60 months imprisonment. Furthermore, the Government and the Defendant jointly recommend that, for the purposes of the Sentencing Guidelines, the loss amount attributable to Defendant is that set forth in Section 2B1.1(b)(1)(J).

**Right to Answer Questions, Correct Misstatements, and Make Recommendations**

The Government reserves the right to inform the Court and the Probation Office of all facts and circumstances regarding the Defendant and this case, and to respond to any questions from the Court and the Probation Office and to any misstatements of fact or law. Except as expressly stated elsewhere in this Plea Agreement, both the Government and the defense reserve the right to make recommendations regarding application of the Sentencing Guidelines and 18 U.S.C. § 3553 applications.

**Right to Modify Recommendations**

With regard to the Government's recommendation as to any specific application of the Sentencing Guidelines as set forth elsewhere in this Plea Agreement, the Defendant understands and agrees that, should the Government obtain or receive additional evidence concerning the facts underlying any such recommendation, the Government will bring that evidence to the attention of the Court and the Probation Office. In addition, if the additional evidence is sufficient to support a finding of a different application of the Guidelines, the Government will not be bound to make the

recommendation set forth elsewhere in this Plea Agreement, and the failure to do so will not constitute a violation of this Plea Agreement.

### **Cooperation**

#### **General Requirements**

The Defendant agrees to cooperate truthfully and completely with the Government, including being debriefed and providing truthful testimony at any proceeding resulting from or related to his cooperation. Defendant agrees to so cooperate in any investigation or proceeding as requested by the Government. Defendant agrees that his cooperation shall include, but not be limited to:

- (a) producing all records, whether written, recorded, electronic, or machine readable, in his actual or constructive possession, custody, or control, of evidentiary value or requested by attorneys and agents of the Government;
- (b) making himself available for interviews, not at the expense of the Government if he is on bond, upon the request of attorneys and agents of the Government;
- (c) responding fully and truthfully to all inquiries of the Government in connection with any investigation or proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001), obstruction of justice (18 U.S.C. § 1503) and related offenses;
- (d) when called upon to do so by the Government in connection with any investigation or proceeding, testifying in grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), obstruction of justice (18 U.S.C. § 1503), and related offenses.

The Defendant understands that the Government alone will determine what forms of cooperation to request from the Defendant, and the Defendant agrees that Defendant will not engage in any investigation that is not specifically authorized by the Government.

**Section 1B1.8 Protection**

Pursuant to Section 1B1.8 of the Sentencing Guidelines, the Government agrees that any self-incriminating information that was previously unknown to the Government and is provided to the Government by the Defendant in connection with Defendant's cooperation and as a result of this Plea Agreement will not be used in determining the applicable sentencing guideline range, although such information may be disclosed to the Probation Office and the Court. The Government also agrees not to bring additional charges against the Defendant, with the exception of charges resulting from or related to violent criminal activity, based on any information provided by the Defendant in connection with cooperation pursuant to the Plea Agreement that was not known to the Government prior to the cooperation. However, if the Government determines that the Defendant has not been completely truthful and candid in cooperation with the Government, he may be subject to prosecution for perjury, false statements, obstruction of justice, and any other appropriate charge, and all information the Defendant has provided may be used against the Defendant in such a prosecution.

**Conditional Section 5K/Rule 35 Motion**

The Government agrees to make the extent of the Defendant's cooperation known to the sentencing court. In addition, if the cooperation is completed before sentencing and the Government determines that such cooperation qualifies as "substantial assistance" pursuant to Title 18, United States Code, Section 3553(e) and/or Section 5K1.1 of the Sentencing Guidelines, the Government

will file a motion at sentencing recommending a downward departure from the applicable guideline range. If the cooperation is completed after sentencing and the Government determines that such cooperation qualifies as “substantial assistance” pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, the Government will file a motion for reduction of sentence. In either case, the Defendant understands that the determination as to whether Defendant has provided “substantial assistance” rests solely with the Government. Good faith efforts by the Defendant that do not substantially assist in the investigation or prosecution of another person who has committed a crime will not result in either a motion for downward departure or a Rule 35 motion. The Defendant also understands that, should the Government decide to file a motion pursuant to this paragraph, the Government may recommend any specific sentence, and the final decision as to what credit, if any, the Defendant should receive for Defendant’s cooperation will be determined by the Court. If the Defendant fails to cooperate truthfully and completely, or if the Defendant engages in additional criminal conduct or other conduct inconsistent with cooperation, Defendant will not be entitled to any consideration whatsoever pursuant to this paragraph.

**Fine**

The Government agrees to recommend no fine be imposed in light of the significant amount of restitution due the victim in this case.

**Restitution**

The Defendant understands that the Court will order restitution as provided in 18 U.S.C. §§ 3663A and 3664 in an amount and method to be determined by the Court. The Defendant understands that the amount of restitution owed to each victim will be determined at or before sentencing, and that the Government will recommend a restitution amount of \$7 million.



**Financial Cooperation Provisions**

**Special Assessment**

The Defendant agrees that, within 30 days of the guilty plea, he will pay a special assessment in the amount of \$100 by money order or certified check made payable to the Clerk of Court, U.S. District Court, 2211 U.S. Courthouse, 75 Spring Street S.W., Atlanta, Georgia 30303. The Defendant agrees to provide proof of such payment to the undersigned Assistant United States Attorney within 30 days of the guilty plea.

**Restitution - Terms of Payment**

The Defendant agrees to pay any restitution imposed by the Court to the Clerk of Court for eventual disbursement to the appropriate account and/or victim(s). If the Defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, he agrees that the custodial agency and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The Defendant understands that this payment schedule represents a minimum obligation and that, should Defendant's financial situation establish that he is able to pay more toward restitution, the Government is entitled to pursue other sources of recovery of restitution. The Defendant further agrees to cooperate fully in efforts to collect the restitution obligation by set-off of program payments, execution on non-exempt property, and any other means the Government deems appropriate.

**Disclosure of Assets**

The Defendant agrees to make a full accounting of all assets and other real and personal property in which Defendant has any legal or equitable interest. The Defendant further agrees that

Defendant will not sell, hide, waste, destroy, or otherwise devalue any such assets before sentencing, without the prior approval of the Government. The Defendant understands and agrees that Defendant's failure to comply with this provision of the Plea Agreement should result in Defendant receiving no credit for acceptance of responsibility.

**Recommendations/Stipulations Non-binding**

The Defendant understands and agrees that the recommendations of the Government, even if made jointly with the Defendant, incorporated within this Plea Agreement, as well as any stipulations of fact or guideline computations incorporated within this Plea Agreement or otherwise discussed between the parties, are not binding on the Court and that the Court's failure to accept one or more of the recommendations, stipulations, and/or guideline computations will not constitute grounds to withdraw his guilty plea or to claim a breach of this Plea Agreement.

**Limited Waiver of Appeal**

LIMITED WAIVER OF APPEAL: To the maximum extent permitted by federal law, the Defendant voluntarily and expressly waives the right to appeal his conviction and sentence and the right to collaterally attack his conviction and sentence in any post-conviction proceeding (including, but not limited to, motions filed pursuant to 28 U.S.C. § 2255) on any ground, except that the Defendant may file a direct appeal of any portion of Defendant's sentence which exceeds 60 months, restitution in excess of \$7 million, and any upward departure or an upward variance from the otherwise applicable sentencing guideline range. The Defendant understands that this Plea Agreement does not limit the Government's right to appeal, but if the Government initiates a direct

appeal of the sentence imposed, the Defendant may file a cross-appeal of that same sentence.

**Miscellaneous Waivers**

**FOIA/Privacy Act Waiver**

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, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

**DNA Waiver**

The parties agree that no biological evidence (as defined in Title 18, United States Code, Section 3600A) has been identified in this case; therefore, the Defendant understands and agrees that no evidence will be preserved for DNA testing.


**No Other Agreements**


There are no other agreements, promises, representations, or understandings between the Defendant and the Government.


In Open Court this      day of January 2010.

**THIS PLEA AGREEMENT IS NOT BINDING ON THE GOVERNMENT UNLESS SIGNED BY THE APPROVING OFFICIAL.**

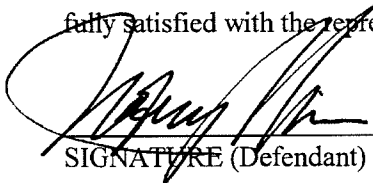
  
SIGNATURE (Attorney for Defendant)

  
SIGNATURE (Approving Official)  
RANDY CHARTASH

  
SIGNATURE (Defendant)

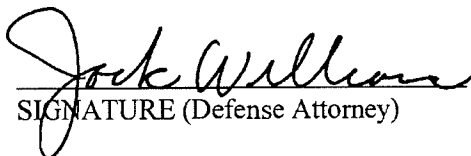
  
SIGNATURE (Assistant U.S. Attorneys)  
GALE MCKENZIE

I have read the Criminal Information against me and have discussed it with my attorney. I understand the charge and the elements of the charge that the Government would have to prove to convict me at a trial, and am willing to waive indictment and allow the Government to file this charge against me. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my conviction and sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my conviction and sentence or challenging my conviction and sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the Government toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.

  
SIGNATURE (Defendant)

12-22-09  
DATE

I am JEFFERY L. LEVINE's lawyer. I have carefully reviewed the charges and the Plea Agreement with my client. To my knowledge, my client is making an informed and voluntary decision to plead guilty and to enter into the Plea Agreement.

  
SIGNATURE (Defense Attorney)

12/22/09  
DATE

INFORMATION BELOW MUST BE TYPED OR PRINTED

Jack Williams  
NAME (Attorney for Defendant)

\_\_\_\_\_  
NAME (Defendant)

271 17<sup>th</sup> Street, Ste 2400  
STREET

\_\_\_\_\_  
STREET

Atlanta Georgia 30363  
CITY & STATE ZIP CODE

\_\_\_\_\_  
CITY & STATE ZIP CODE

PHONE NUMBER 404-879-2428

PHONE NUMBER \_\_\_\_\_

STATE BAR OF GEORGIA NUMBER 762366

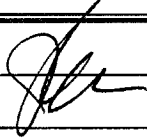
Filed in Open Court

\_\_\_\_\_

By \_\_\_\_\_

U. S. DEPARTMENT OF JUSTICE  
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIMINAL ACTION NO.:	1:09-CR-554
DEFENDANT'S NAME:	JEFFREY L. LEVINE <i>bm gw</i> 
PAY THIS AMOUNT:	\$100

INSTRUCTIONS:

1. PAYMENT MUST BE MADE BY CERTIFIED CHECK OR MONEY ORDER  
PAYABLE TO:

CLERK OF COURT, U.S. DISTRICT COURT

**\*PERSONAL CHECKS WILL NOT BE ACCEPTED\***

2. PAYMENT MUST REACH THE CLERK'S OFFICE WITHIN 30 DAYS OF THE ENTRY OF YOUR GUILTY PLEA
3. PAYMENT SHOULD BE SENT OR HAND DELIVERED TO:

Clerk, U.S. District Court  
2211 U.S. Courthouse  
75 Spring Street S.W.,  
Atlanta, Georgia 30303  
(Do not Send Cash)

4. INCLUDE DEFENDANT'S NAME ON CERTIFIED CHECK OR MONEY ORDER
5. ENCLOSE THIS COUPON TO INSURE PROPER AND PROMPT APPLICATION OF PAYMENT
6. PROVIDE PROOF OF PAYMENT TO THE ABOVE-SIGNED AUSA WITHIN 30 DAYS OF THE GUILTY PLEA