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11 UNITED STATES OF AMERICA

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13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,) No. CR 05-398-GAF
16 Plaintiff,)
17 v.) **BINDING PLEA AGREEMENT FOR**
18 STUART H. WOLFF,) **DEFENDANT STUART H. WOLFF**
19 Defendant.) **FRCP 11(c)(1)(C)**
20)
21)

21

22 1. This constitutes the binding plea agreement between
23 defendant STUART H. WOLFF ("defendant") and the United States
24 Attorney's Office for the Central District of California
25 (the "USAO") in the above-captioned case. This agreement is
26 limited to the USAO and cannot bind any other federal, state, or
27 local prosecuting, administrative, or regulatory authorities.

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1 **BINDING NATURE OF PLEA AGREEMENT**

2 2. This Agreement is entered into pursuant to Federal Rule
3 of Criminal Procedure 11(c)(1)(C). The Court is not a party to
4 this Agreement and need not accept this Agreement. Prior to
5 defendant's sentencing pursuant to this Agreement, the parties
6 request that the Court advise the USAO and defendant whether the
7 Court agrees to be bound by the terms of this Agreement, and
8 specifically whether the Court will sentence defendant within the
9 boundaries that the parties agreed upon in paragraph 18 of this
10 Agreement.

11 3. If the Court determines before defendant enters his
12 guilty plea not to be bound by the terms of this Agreement, then
13 neither the USAO nor defendant will be bound by this Agreement or
14 any of its terms or conditions, and the USAO will be free to
15 pursue whatever further investigation and prosecution of
16 defendant it deems appropriate.

17 4. If the Court determines after defendant has entered his
18 guilty plea not to be bound by the terms of this Agreement, then,
19 pursuant to Federal Rule of Criminal Procedure 11(d)(2)(A),
20 defendant will have the opportunity to withdraw his guilty plea.
21 The USAO and defendant will no longer be bound by this Agreement
22 or any of its terms or conditions, and the USAO will be free to
23 pursue whatever further investigation and prosecution of
24 defendant it deems appropriate.

1 **PLEA**

2 5. Defendant agrees to plead guilty to count one of the
3 Indictment in United States v. Wolff, CR 05-398-GAF, as set forth
4 in the factual basis in paragraph 12 below.

5 **NATURE OF THE OFFENSE**

6 6. In order for defendant to be guilty of count one, which
7 charges criminal conspiracy in violation of Title 18, United
8 States Code, Section 371, the following must be true:

9 a. There was an agreement between two or more people
10 to commit the crime of securities fraud, in violation of
11 15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. § 240.10b-5;

12 b. Defendant became a member of the conspiracy
13 knowing of its object and intending to help accomplish it; and

14 c. One of the members of the conspiracy performed at
15 least one overt act for the purpose of carrying out the
16 conspiracy.

17 Defendant admits that defendant is, in fact, guilty of the
18 offense as set forth in the factual basis below and described, in
19 part, in count one of the Indictment.

20 **PENALTIES AND RESTITUTION**

21 7. The statutory maximum sentence that the Court can
22 impose for a violation of 18 U.S.C. § 371 (conspiracy), is:
23 five years imprisonment; a three-year period of supervised
24 release; a fine of \$250,000 or twice the gross gain or gross loss
25 resulting from the offense, whichever is greater; and a mandatory
26 special assessment of \$100.

1 8. The government believes that restitution is mandatory
2 in this case pursuant to 18 U.S.C. § 3663A. Defendant
3 understands that the Court will determine if defendant is
4 required to pay full restitution to the victims of the offense
5 based on his guilty plea. If the Court so determines, defendant
6 agrees that, in return for the USAO's compliance with its
7 obligations under this agreement, the amount of restitution is
8 not restricted to the amounts alleged in the count to which
9 defendant is pleading guilty, and may include losses arising from
10 charges not prosecuted pursuant to this agreement as well as all
11 relevant conduct in connection with those charges. The parties
12 do not currently have an agreement as to the amount of
13 restitution, but recognize and agree that the restitution amount
14 could change based on facts that come to the attention of the
15 parties prior to sentencing. Defendant further agrees that
16 defendant will not seek the discharge of any restitution
17 obligation, in whole or in part, in any present or future
18 bankruptcy proceeding.

19 9. Supervised release is a period of time following
20 imprisonment during which defendant will be subject to various
21 restrictions and requirements. Defendant understands that if
22 defendant violates one or more of the conditions of any
23 supervised release imposed, defendant may be returned to prison
24 for all or part of the term of supervised release, which could
25 result in defendant serving a total term of imprisonment greater
26 than the statutory maximum stated above.

1 10. Defendant also understands that, by pleading guilty,
2 defendant may be giving up valuable government benefits and
3 valuable civic rights, such as the right to vote, the right to
4 possess a firearm, the right to hold office, and the right to
5 serve on a jury.

6 11. Defendant further understands that the conviction in
7 this case may subject defendant to various collateral
8 consequences, including but not limited to suspension or
9 revocation of a professional license if defendant maintains any
10 such license. Defendant understands that unanticipated
11 collateral consequences will not serve as grounds to withdraw
12 defendant's guilty plea.

13 **FACTUAL BASIS**

14 12. Defendant and the USAO agree and stipulate to the
15 statement of facts provided below. This statement of facts
16 includes facts sufficient to support a plea of guilty to the
17 charge described in this agreement and to establish the
18 sentencing guideline factors set forth below. It is not meant to
19 be a complete recitation of all facts relevant to the underlying
20 criminal conduct or all facts known to either party that relate
21 to that conduct.

22 a. During 2001, defendant Wolff was the Chief
23 Executive Officer and Chairman of the Board of Directors of
24 Homestore.com, Inc. ("Homestore"). At the time, Homestore was
25 the largest Internet-based provider of residential real estate
26 listings and related content. The headquarters and main

1 operations of Homestore were located in Westlake Village,
2 California.

3 b. Homestore was a publicly traded company.
4 Homestore's stock traded on the Nasdaq National Market System.

5 c. As a public company, Homestore was required to
6 report the financial results of its operations periodically to
7 the United States Securities and Exchange Commission (the "SEC"),
8 securities analysts, and investors. Among the important results
9 that Homestore reported after the end of each fiscal quarter were
10 the amounts of revenue that Homestore generated each quarter.

11 d. During 2001, defendant Wolff entered into an
12 agreement with other senior Homestore executives to improperly
13 record advertising revenue in Homestore's publicly reported
14 revenue figures in amounts that would be material to investors in
15 Homestore's stock.

16 e. Defendant Wolff joined the agreement knowing that
17 it involved making false statements to investors and the SEC.
18 At no point during 2001 did defendant Wolff or any other senior
19 executive of Homestore publicly disclose to the SEC, securities
20 analysts, or investors that Homestore reported a material amount
21 of improperly recorded advertising revenue.

22 Overt Acts in Furtherance of the Conspiracy

23 f. On or about May 15, 2001, defendant Wolff signed
24 Homestore's Form 10-Q for the first quarter of 2001, which
25 contained false and misleading representations and omitted
26 material facts regarding the company's advertising revenue
27 results. (Overt Act No. 19).

1 g. On or about August 14, 2001, defendant Wolff
2 signed Homestore's Form 10-Q for the second quarter of 2001,
3 which contained false and misleading representations and omitted
4 material facts regarding the company's advertising revenue
5 results. (Overt Act No. 55).

6 **WAIVER OF CONSTITUTIONAL RIGHTS**

7 13. By pleading guilty, defendant gives up the following
8 rights:

9 a) The right to persist in a plea of not guilty.

10 b) The right to a speedy and public trial by jury.

11 c) The right to the assistance of legal counsel at
12 trial, including the right to have the Court appoint counsel for
13 defendant for the purpose of representation at trial. (In this
14 regard, defendant understands that, despite defendant's plea of
15 guilty, defendant retains the right to be represented by counsel
16 - and, if necessary, to have the Court appoint counsel if
17 defendant cannot afford counsel - at every other stage of the
18 proceedings.)

19 d) The right to be presumed innocent and to have the
20 burden of proof placed on the government to prove defendant
21 guilty beyond a reasonable doubt.

22 e) The right to confront and cross-examine witnesses
23 against defendant.

24 f) The right, if defendant wished, to testify on
25 defendant's own behalf and present evidence in opposition to the
26 charges, including the right to call witnesses and to subpoena
27 those witnesses to testify.

1 g) The right not to be compelled to testify, and, if
2 defendant chose not to testify or present evidence, to have that
3 choice not be used against defendant.

4 By pleading guilty, defendant also gives up any and all
5 rights to pursue any affirmative defenses, Fourth Amendment or
6 Fifth Amendment claims, and other pretrial motions (including
7 motions alleging violations of Brady v. Maryland) that have been
8 filed or could be filed.

9 **SENTENCING PROVISIONS AND STIPULATED SENTENCING RANGE**

10 14. Defendant understands that the Court is required to
11 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
12 including the kinds of sentence and sentencing range established
13 under the United States Sentencing Guidelines ("USSG" or
14 "Sentencing Guidelines"), in determining defendant's sentence.
15 Defendant further understands that the Sentencing Guidelines are
16 advisory only, and that after considering the Sentencing
17 Guidelines and the other § 3553(a) factors, the Court may be free
18 to exercise its discretion to impose any reasonable sentence
19 within the range agreed to by the parties in paragraph 18 below.

20 15. Defendant and the USAO have no agreement regarding the
21 calculation of the advisory guidelines for defendant's offense.
22 The parties agree that defendant's offense calculation should be
23 determined by use of the Sentencing Guidelines manual adopted in
24 November 2000.

25 16. There is no agreement as to defendant's criminal
26 history or criminal history category.

1 17. Pursuant to the factors set forth in 18 U.S.C.
2 § 3553(a)(1), (a)(2), (a)(3), (a)(6), and (a)(7), defendant
3 reserves the right to argue for a sentence outside the sentencing
4 range established by the Sentencing Guidelines. However,
5 pursuant to the terms of this binding plea agreement, defendant
6 may not argue for a sentence below the minimum sentence agreed
7 upon by the parties in paragraph 18.

8 18. Defendant and the USAO agree that an appropriate
9 disposition of this case is that the Court impose a sentence
10 consisting of the following terms: a period of incarceration
11 within a range of no less than 36 months and no more than the
12 statutory maximum of 60 months; three years of supervised
13 release; a fine and restitution order in amounts to be determined
14 by the Court; and a \$100 special assessment.

15 19. The parties acknowledge that defendant is attempting to
16 settle related civil claims brought against him by the SEC in the
17 action entitled Securities and Exchange Commission v. Wolff,
18 case no. CV 05-3132-SVW, and with the class of plaintiffs in the
19 action entitled In re Homestore.com, Inc. Securities Litigation,
20 case no. CV 01-11115-RSWL. If the Court orders defendant to pay
21 restitution in this matter, to the extent that defendant makes
22 payments to victims of the charged crime as part of those
23 two civil cases, the USAO and defendant agree that those payments
24 should be credited toward any restitution ordered by the Court.

25 20. The Court will determine the facts and calculations
26 relevant to sentencing and decide whether to agree to be bound by
27 this agreement. Both defendant and the USAO are free to
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1 supplement the facts by supplying relevant information to the
2 United States Probation Office and the Court.

3 **DEFENDANT'S OBLIGATIONS**

4 21. Defendant agrees that defendant will:

5 a. Plead guilty as set forth in this agreement.

6 b. Not knowingly and willfully fail to abide by all
7 sentencing stipulations contained in this agreement.

8 c. Not knowingly and willfully fail to: (i) appear as
9 ordered for all court appearances, (ii) surrender as ordered for
10 service of sentence, (iii) obey all conditions of any bond, and
11 (iv) obey any other ongoing court order in this matter.

12 d. Not commit any crime; however, offenses that would
13 be excluded for sentencing purposes under USSG § 4A1.2(c) are not
14 within the scope of this agreement.

15 e. Not knowingly and willfully fail to be truthful at
16 all times with the U.S. Pretrial Services Agency, the U.S.
17 Probation Office, and the Court.

18 f. Pay the applicable special assessment at or before
19 the time of sentencing unless defendant lacks the ability to pay
20 and submits a completed Financial Statement Form (Form OBD-500)
21 to the USAO before sentencing.

22 g. Surrender for any custody term ordered by the
23 Court to the institution to which defendant has been designated
24 for incarceration or, in the event that no designation has been
25 made, to the United States Marshals Service, 255 E. Temple
26 Street, Los Angeles, California, within 60 days from the date of
27 defendant's sentencing.

1 **THE USAO'S OBLIGATIONS**

2 22. If defendant complies fully with all defendant's
3 obligations under this agreement, the USAO agrees:

4 a. To abide by all sentencing stipulations contained
5 in this agreement.

6 b. At the time of sentencing to move to dismiss the
7 remaining counts of the Indictment as against defendant.
8 Defendant agrees, however, that at the time of sentencing the
9 Court may consider the dismissed counts in determining the
10 applicable Sentencing Guidelines range, where the sentence should
11 fall within that range, the propriety and extent of any departure
12 from that range, and the determination of the sentence to be
13 imposed after consideration of the Sentencing Guidelines and all
14 other relevant factors under 18 U.S.C. § 3553(a).

15 **BREACH OF AGREEMENT**

16 23. If defendant, at any time after the execution of this
17 agreement, knowingly violates or fails to perform any of
18 defendant's agreements or obligations under this agreement, the
19 USAO may declare this agreement breached. If the USAO declares
20 this agreement breached at any time following its execution, and
21 the Court finds such a breach to have occurred, then: (a) if
22 defendant has previously entered a guilty plea, defendant will
23 not be able to withdraw the guilty plea, and (b) the USAO will be
24 relieved of all of its obligations under this agreement.

25 24. Following a knowing and willful breach of this
26 agreement by defendant, should the USAO elect to pursue any
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1 charge that was dismissed or not pursued to trial as a result of
2 this agreement, then:

3 a. Defendant agrees that any applicable statute of
4 limitations is tolled between the date of defendant's signing of
5 this agreement and the commencement of any such prosecution or
6 action.

7 b. Defendant gives up all defenses based on the
8 statute of limitations, any claim of preindictment delay, or any
9 speedy trial claim with respect to any such prosecution, except
10 to the extent that such defenses existed as of the date of
11 defendant's signing of this agreement.

12 c. Defendant agrees that: (i) any statements made by
13 defendant under oath at the guilty plea hearing (if such a
14 hearing occurred prior to the breach); and (ii) any evidence
15 derived from such statements, are admissible against defendant in
16 any such prosecution of or action against defendant, and
17 defendant shall assert no claim under the United States
18 Constitution, any statute, Rule 410 of the Federal Rules of
19 Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure,
20 or any other federal rule, that the statements or any evidence
21 derived from any statements should be suppressed or are
22 inadmissible.

23 **LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK**

24 25. Defendant gives up the right to appeal any sentence of
25 imprisonment imposed by the Court and the manner in which the
26 sentence is determined, provided that the sentence falls within
27 the range anticipated by this binding plea as specified in
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1 paragraph 18 above. Notwithstanding the foregoing, defendant
2 retains any ability defendant has to appeal the Court's
3 determination of any fine or restitution order, defendant's
4 criminal history category and the conditions of supervised
5 release imposed by the Court, with the exception of the
6 following: conditions set forth in General Orders 318, 01-05,
7 and/or 05-02 of this Court; the drug testing conditions mandated
8 by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug
9 use conditions authorized by 18 U.S.C. § 3563(b)(7).

10 26. The USAO gives up the right to appeal any sentence of
11 imprisonment imposed by the Court and the manner in which the
12 sentence is determined, provided that the sentence falls within
13 the range anticipated by this binding plea as specified in
14 paragraph 18 above.

15 **COURT NOT A PARTY**

16 27. The Court is not a party to this agreement and need not
17 accept any of the USAO's sentencing recommendations or the
18 parties' stipulations. If the Court does not accept the terms of
19 the proposed sentence described above, then defendant will be
20 permitted to withdraw his guilty plea pursuant to Federal Rule of
21 Criminal Procedure 11(c) and paragraph 4 of this agreement.

22 **NO ADDITIONAL AGREEMENTS**

23 28. Except as set forth herein, there are no promises,
24 understandings or agreements between the USAO and defendant or
25 defendant's counsel. Nor may any additional agreement,
26 understanding, or condition be entered into unless in a writing
27 signed by all parties or on the record in court.

1 **PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING**

2 29. The parties agree and stipulate that this Agreement
3 will be considered part of the record of defendant's guilty plea
4 hearing as if the entire Agreement had been read into the record
5 of the proceeding.

6 This agreement is effective upon signature by defendant and
7 an Assistant United States Attorney.

8
9 AGREED AND ACCEPTED

10 UNITED STATES ATTORNEY'S OFFICE
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 GEORGE S. CARDONA
13 Acting United States Attorney

14 /s/ AUSA Wilner

January 7, 2010

15 _____
16 MICHAEL J. RAPHAEL
17 MICHAEL R. WILNER
18 Assistant United States Attorneys

19 _____
20 Date

1 I have read this agreement and carefully discussed every
2 part of it with my attorney. I understand the terms of this
3 binding plea agreement, and I voluntarily agree to those terms.
4 My attorney has advised me of my rights, of possible defenses, of
5 the sentencing factors set forth in 18 U.S.C. § 3553(a), of the
6 relevant Sentencing Guidelines provisions, and of the
7 consequences of entering into this agreement. No promises or
8 inducements have been given to me other than those contained in
9 this agreement. No one has threatened or forced me in any way to
10 enter into this agreement. Finally, I am satisfied with the
11 representation of my attorney in this matter.

12 Stuart H. Wolff 1/7/10
13 Stuart H. Wolff Date
14 Defendant

15 I am Stuart Wolff's attorney. I have carefully discussed
16 every part of this binding plea agreement with my client.
17 Further, I have fully advised my client of my client's rights, of
18 possible defenses, of the sentencing factors set forth in
19 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines
20 provisions, and of the consequences of entering into this
21 agreement. To my knowledge, my client's decision to enter into
22 this agreement is an informed and voluntary one.

23 John L. Gibbons 1/7/10
24 John Gibbons Date
25 Daniel Rubinstein
26 Attorneys for Defendant
27 Stuart H. Wolff