

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Action No. 13-mj-01053

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. CONCRETE MANAGEMENT CORPORATION (CMC),

Defendant.

PLEA AGREEMENT

The United States of America, by and through John F. Walsh, United States Attorney for the District of Colorado, Bob Brown, Assistant United States Attorney, and Beth Gibson, Special Assistant United States Attorney, and the defendant, Commercial Management Corporation (CMC), personally and by counsel, Michael Poindexter, hereby submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1.

I. AGREEMENT

A. *Defendant's Obligations:*

The defendant agrees to plead guilty to an Information, charging the defendant with a pattern or practice of illegal employment, in violation of 8 U.S.C. § 1324a(a)(1), (a)(2) and (f). The defendant further agrees to pay forfeiture pursuant to 18 U.S.C. § 982(a)(6) in the amount of \$175,000.

B. Government's Obligations:

In exchange for the defendant's plea of guilty and waiver of appellate rights, the United States agrees to recommend the Court give the defendant full credit for acceptance of responsibility per USSG § 3E1.1, unless the defendant or any of its principals engages in conduct that qualifies for the obstruction of justice enhancement under §§ 3C1.1 and 3E1.1, comment (note 4) between the time of his guilty plea and sentencing.

II. ELEMENTS OF THE OFFENSE(S)

The parties agree that the elements of the offense to which the defendant is entering a plea of guilty are as follows:

First: A person or entity;

Second: Hired and continued to employ;

Third: Aliens unauthorized to work in the United States;

Fourth: Knowing the aliens were not authorized to work in the United States; and

Fifth: Made it a pattern or practice to engage in such hiring and employment.

III. STATUTORY PENALTIES

The defendant is pleading guilty to a Class B misdemeanor. The maximum penalties are a \$3,000 fine for each alien unauthorized alien employed in violation of the law, probation for a period not to exceed five years because the defendant is an organization, and a \$100 special assessment. Forfeiture is also applicable pursuant to 18 U.S.C. § 982(a)(6).

IV. STIPULATION OF FACTS

The parties agree that there is a factual basis for the guilty plea that the defendant will tender pursuant to this plea agreement. Additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have stipulated and which are relevant to the Court's guideline computations, to other 18 U.S.C. §3553 factors, or to the Court's overall sentencing decision.

The parties stipulate and agree as follows:

The defendant is a corporation that has doing business in Colorado and many other states since September 1999. From that time through September of 2012, the defendant hired and continued to employ aliens knowing that those aliens were not authorized to work in the United States. During this period, CMC actors, including its president, secretary, treasurer, human resource officers, and project managers, hired aliens who lacked the documents required by law to complete an employment eligibility verification form (form I-9). Records reflect the vast majority of CMC's employees at any given time did not have genuinely issued documents. At one point in early 2009, 269 of its employees did not have social security numbers that corresponded to them. CMC had employees routinely come and go, such that through time CMC employed more than 269 employees who lacked valid work status.

At times, CMC referred aliens it hired to a fake document vendor so the aliens could purchase and submit fake documents to CMC. In multiple instances, CMC continued to employ aliens, knowing the aliens had been arrested and deported and had returned to the United States in violation of the law. On many occasions, CMC employees were rejected from working on projects because the CMC workers had patently fake documents or had clearly changed social security numbers. Because some of CMC's unlawful workers were denied access to military bases and were rejected by certain contractors, CMC generally sent lawful workers to some projects and sent unlawful workers to other projects.

On several occasions, police stopped CMC vehicles and concluded the driver and or passengers were not lawfully present in the United States. To avoid the arrest of its unlawful workers, devised a plan to provide them with a document stating an application was pending with the U.S. government. For those aliens, CMC sponsored them using the "labor certification process." CMC had on file fake documents for those aliens purporting to give them lawful status in the United States such that those workers would not have needed to be sponsored. In all but one instance, either the Department of Labor or Department of Homeland Security denied the application filed by CMC. Nonetheless, CMC continued to employ the aliens after receiving notice of the denial. Notably, the Department of Labor generally denied the application based on CMC's complete failure to respond to requests for additional information.

Similarly, CMC continued to employ aliens even after Colorado mailed them letters notifying CMC that particular employees had a "bad" social security number. CMC routinely provided false affirmations to Colorado officials. CMC advised aliens

with “bad” social security numbers to get new ones. CMC files thus contained documents for a single alien with different social security numbers.

CMC provided some of its unauthorized alien workers with vehicles to drive and with housing at properties owned by CMC principals or in hotels/motels. To facilitate a project in Grand Junction, in 2004 CMC purchased four houses for \$495,000 employees, including unlawful employees, could stay in them. As of 2012, those four houses have a combined assessed value of \$412,620. Initially, CMC workers at the houses slept on wooden crates with sleeping bags. In addition to using unlawful labor to perform jobs for others, CMC principals/managers relied on some of its unlawful workers to construct their personal residences.

To avoid paying workers their full and fair compensation, CMC used a “two check” system. The first check contained either no overtime wages or overtime wages for a small number of hours. The second check paid overtime hours but at the regular rate of pay. CMC advised workers that they would receive the same amount of pay ultimately because the second check, concealed as travel or other expenses, was not subject to withholding of wages. Using this system, CMC avoided paying money to the federal government in the weekly checks of each employee for at least three years, 2007, 2008, and 2009.

V. AGREEMENTS OF THE PARTIES REGARDING FORFEITURE

The defendant agrees to the entry of a forfeiture money judgment in the amount of \$175,000. The defendant further agrees to remit funds in satisfaction of the forfeiture money judgment on or before the day of sentencing in this case. This represents the value of property and direct or indirect proceeds as set forth in 18 U.S.C.

§ 982(a)(6) as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of illegal employment offense. The defendant further agrees to waive all interest in the asset(s) in any forfeiture proceeding. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant further agrees to waive all constitutional and statutory challenges to forfeiture. The defendant also waives any failure by the Court to advise the defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant understands and agrees that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct, property facilitating illegal conduct, property involved in illegal conduct giving rise to forfeiture, or substitute assets for property otherwise subject to forfeiture.

VI. OTHER PROCEEDINGS

The United States makes no promises or predictions regarding possible debarment of the defendant or any of its principals or employees. Nothing in this agreement shall release, prevent, bar, or compromise any debarment or other action or proceeding related to federal contracting. This plea agreement subsumes any civil sanction against the defendant related to its compliance with the Immigration and Nationality Act's employee eligibility verification (form I-9) requirements for the period

described in this agreement, September of 1999 through September 2012. The defendant is not absolved from future compliance with those laws and may be subject to inspection and fines for any conduct after September 2012. Any future failure of the defendant to comply with such laws will be regarded as a subsequent offense and subject the defendant to increased civil penalties. Finally, the United States Attorney's Office declines to pursue civil proceedings for the conduct described in this plea agreement and statement of facts.

VII. ENTIRE AGREEMENT

This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

Date:

4/22/2013

Defendant

Barry K. Schneider, Director CMC

Date:

4/22/2013

Michael Poindexter
Attorney for Defendant

Date:

4/22/2013

Bob Brown
Assistant United States Attorney
Beth Gibson
Special Assistant U.S. Attorney