

U.S. Department of Justice

Eastern District of Louisiana  
U.S. Attorney's Office

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May 17,2001

Honorable G. Thomas Porteous, Jr.  
United States District Court  
Eastern District of Louisiana  
500 Camp Street, Room  
New Orleans, LA 70130

Re: United States vs. Barbecue New Orleans, Inc.,  
d/b/a State Palace Theater, or Theater  
Criminal Docket No. 01-153"T"(1)

Dear Judge Porteous:

In compliance with the holding of Bryan v. United States, 492 F2d. 775 (5<sup>th</sup> Cir. 1974) and with Rule 11 of the Federal Rules of Criminal Procedure, The United States of America wishes to acknowledge the following agreement between the government and the defendant, Barbecue of New Orleans, Inc., d/b/a State Palace Theater or Theater and the corporation's attorney.

The Government intends to present one count bill of information charging conspiracy (Title 21, United States Code, Section 846) to violate Title 21, United States Code, Section 856(a)(2). The Government agrees to allow the defendant to plead guilty as charged, after a waiver of indictment. Also, the Government agrees that the defendant and its incorporators and officers will not be charged with any other criminal violations in the Eastern District of Louisiana occurring during concerts or events conducted on or arising out of the Operation of The State Palace Theater, 1008 Canal Street, New Orleans, Louisiana, 70112 prior to the date of this agreement. This agreement does not affect the Government's right to prosecute any crimes of violence.

The defendant further understands that the maximum penalty that may be received upon the plea of guilty is a fine of \$2,000,000. Further, the defendant understands that a mandatory special assessment of \$400.00 shall be imposed under the provision of section 3013 of Title 1S United States Code.

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In addition, pursuant to Fed. R. Crim. P. 11(e)(1)(C) the Government and the defendant agree that an appropriate sentence for the defendant is a \$100,000 fine on count 1 of the bill of information, the schedule of payments to be determined by the United States Probation Service and a \$400 special assessment. Additionally, the defendant agrees pursuant to the aforementioned provision of the Federal Rules of Criminal Procedure and Title 21, United States Code, Sections 882(a), 846, and 856(a)(2) and 863 that BARBECUE OF NEW ORLEANS, INC. d/b/a State Palace Theater or Theater. Robert J. Brunet, Brian J. Brunet and any other corporation or business that these two individuals are associated with hereinafter referred to as the subjects) will not engage in the following particular activities which constitute violations of Title 21 of the United States Code:

The introduction, sale, distribution or providing of the following items at or into the State Palace Theater, 1108 Canal Street, New Orleans, Louisiana, 70112 during a concert or an event where an admission is charged:

1. Infant pacifiers or any object in the shape of a pacifier
2. Objects that glow, including but not limited to glow sticks and flashing rings
3. Vapor rub products and vapor inhalers
4. Dust masks or masks of any description
5. Masseur, Masseuse or massage tables
6. "Chill Rooms" or areas in the theater which are purposely kept 15 degrees cooler than the rest of the theater.

Further the defendant agrees that the subjects will take all reasonable steps to prohibit the introduction of infant pacifiers or any objects that glow, including but not limited to glow sticks and flashing rings, vapor rub products, and vapor inhalers, dust masks or masks of any description by any person entering a concert or an event where an admission is charged or at the State Palace Theater, 1108 Canal Street, New Orleans, Louisiana 70112.

Further the defendant agrees that if the subjects or any of their employees observe a person at the theater selling or in the possession of a controlled substance they should have and implement a policy to seize the contraband and detain the person, if reasonably possible, and contact the New Orleans Police Department.

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The defendant understands that "the court may accept or reject the Rule 11(e)(1)© agreement, or may defer its decision as to the acceptance or the rejection until there has been an opportunity to consider the pre-sentence report" Fed. R. Crim. P. 11(e)(2). The parties further agree that should the Court reject this agreement or any condition thereof, the Government or the defendant have the option of declaring this plea agreement null and void.

The defendant understands that any discussion with anyone regarding else regarding the sentencing guidelines are merely rough estimates and the court is not bound by those discussions. The defendant additionally understands the court could impose the maximum fine allowed by law.

Except as otherwise provided in this paragraph, the defendant hereby expressly waives the right to appeal the sentence on any grounds, including but not limited to any appeal right conferred by 18 U.S.C. Sec. 3742 on the defendant, and the defendant further agrees not to contest the sentence in any post-conviction proceeding, including but not limited to a proceeding under Title 28 U.S.C. Sec 2255. The defendant, however, reserves the right to appeal the following: (a) any punishment imposed in excess of statutory maximum, and (b) any punishment to the extent it constitutes an upward departure from the guideline range deemed most applicable by the sentencing Court. Also, the defendant waives any right to seek attorney's fees and/or other litigation expenses under the "Hyde Amendment", Title 18 United States Code, Section 3006 A. And the defendant acknowledges that the Government's position in the instant prosecution was not vexatious, frivolous or in bad faith.

This agreement is predicated upon the fact that the incorporators and officers of the corporation agree to continue to submit to debriefings whenever and wherever requested by federal and state prosecutors, special agents of the Government, and officers of local law enforcement agencies. The incorporators and officers of the corporation understand that they must be truthful in any and every debriefing. They also agree to appear before any grand jury and at trial and testify completely and truthfully. The Government reserves the right to verify by any means it sees fit any statements or testimony given by the incorporators and officers. In addition the incorporators and officers waive their Fifth Amendment privilege against self-incarceration if called as a witness to testify to facts arising out of this investigation because of this agreement in any future proceedings.

In consideration of the corporations willingness to acknowledge its guilt and accept responsibility for the wrongful conduct in compliance with the aforementioned conditions, the Government agrees that it will do the following"

1. The Government will bring to the attention of al federal courts, prosecutors and Probation Officers of any cooperation rendered to law enforcement by the incorporators and officers of the corporation. However, the incorporators and officer's cooperation does not automatically require the Government to request a departure from the sentencing guidelines for substantial assistance to the Government. The decision will be made by the Government after it evaluates the cooperation. If the Government decides to file a motion that the Court may depart pursuant to Section 5K1.1 of the sentencing guidelines, the Government will file a motion at a time determined by the Government, and only after the Government evaluates the entire cooperation of the incorporators and officers. The defendant understands the motion could be filed prior to sentencing, at sentencing or after sentencing pursuant to Rule 35 of the Fed R. Crim. P.

2. The Government also agrees that any statements or testimony given by the incorporators and officers of the corporation, as of and after the date of this letter, pursuant to questions asked by law enforcement agents or to prosecutors as a result of the agreement will not be used against the corporation or incorporators or officers. However, all parties understand that any statements or testimony given by the incorporators and officers can be used as leads for any other reason against other persons. This agreement not to use statements or testimony does not apply to crimes of violence. Further, the incorporators and officers fully understands that should they commit perjury or give false statements to federal agents, such statements and testimony can be used, and they face additional charges involving false statements and perjury.

The defendant understands that, other than the above stated agreement, there has been no promise with regard to sentencing.

Finally if the defendant decides at any time to withdraw from this plea agreement or does not fully comply with it, the Government reserves the right to proceed as if the plea agreement were not entered into. The Government would also have the authority to bring any other applicable charges against the defendant or incorporators and officers of the Corporation. The defendant enters into this plea bargain freely and voluntarily.

FOR THE GOVERNMENT

FOR THE DEFENSE

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ALBERT J. WINTERS, JR. (13606)  
Assistant United States Attorney  
Senior Litigation Counsel

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Barbecue of New Orleans, Inc., d/b/a  
State Palace Theater or Theater  
Defendant