

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 21-cr-0165-RM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. RUSSELL FOREMAN,

Defendant.

PLEA AGREEMENT

The United States of America (the government), by and through Robert Brown, Assistant United States Attorney for the District of Colorado, and the defendant, RUSSELL FOREMAN personally and by counsel, Mary Butterton, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1. This agreement binds only the Criminal Division of the United States Attorney's Office for the District of Colorado and the defendant.

I. AGREEMENT

A. Defendant's Plea of Guilty:

The defendant agrees

- (1) to plead guilty to counts 5 and 9 of the indictment which charge a violation of Title 18, United States Code, Section 1343, Wire Fraud and Section 1957.
- (2) to waive certain appellate and collateral attack rights, as explained in detail below.

- (3) be liable for restitution in the amount of approximately \$367,552 which could include joint and several liability for some or all of the amount with any coconspirator.
- (4) to the entry of a final order of forfeiture described fully below.

B. Government's Obligations:

This agreement is made pursuant to Fed.R.Crim.P.11(c)(1)(A). The government agrees to move to dismiss the remaining charges against the defendant in the indictment. Should the plea of guilty be vacated on the motion of the defendant, the government may, in its sole discretion, move to reinstate any or all of the counts dismissed pursuant to this agreement.

The government agrees that the defendant should receive a two-level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(a). If the defendant does not engage in prohibited conduct or otherwise implicate USSG § 3C1.1, the government agrees to file a motion requesting that the defendant receive a one level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(b).

As to sentencing, the government agrees to recommend a sentence within the advisory guideline range as calculated in this agreement.

C. Appellate Waiver

The defendant is aware that 18 U.S.C. § 3742 affords the right to appeal the sentence, including the manner in which that sentence is determined. Understanding this, and in exchange for the concessions made by the government in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence (including the restitution order), unless it meets one of the following criteria:

- (1) the sentence exceeds the maximum penalty provided in the statutes of conviction, 18 U.S.C. §§1343 and 1957;
- (2) the sentence exceeds the top end of the advisory guideline range from the Sentencing Guidelines that applies for the defendant's criminal history (as determined by the district court) at a total offense level of 17; or
- (3) the government appeals the sentence imposed.

If the first criteria applies, the defendant may appeal only the issue of how his sentence exceeds the statutory maximum sentence. But if one of the latter two criteria apply, the defendant may appeal on any ground that is properly available in an appeal that follows a guilty plea.

The defendant also knowingly and voluntarily waives the right to challenge this prosecution, conviction, or sentence (including the restitution order) in any collateral attack (including, but not limited to, a motion brought under 28 U.S.C. § 2255. This waiver provision does not prevent the defendant from seeking relief otherwise available in a collateral attack on any of the following grounds:

- (1) the defendant should receive the benefit of an explicitly retroactive change in the sentencing guidelines or sentencing statute;
- (2) the defendant was deprived of the effective assistance of counsel; or
- (3) the defendant was prejudiced by prosecutorial misconduct.

The Defendant also waives the right to appeal any sentence imposed below or within the Guideline range upon a revocation of supervised release in this case number, except where the defendant unsuccessfully objects to the grade of violation applied by the court during the district court revocation proceedings. In that event, this waiver does not apply, and the defendant may appeal the sentence imposed upon a revocation of supervised release, even if that sentence falls below or within the guideline range calculated by the court.

The Defendant also waives the right to appeal the denial of any motion filed under 18 U.S.C. § 3582(c)(1)(A) where such denial rests in any part upon the court's determination that a sentence reduction is not warranted under the factors set forth in 18 U.S.C. § 3553(a). This waiver does not apply to an appeal of a denied § 3582(c)(1)(A)(i) motion where the district court, in denying the motion on § 3553(a) grounds, failed to consider the facts allegedly establishing extraordinary and compelling circumstances as part of its § 3553(a) analysis.

D. Forfeiture of Assets:

The defendant admits the forfeiture allegations as set forth in the Indictment. The defendant further agrees to forfeit to the United States immediately and voluntarily any interest the defendant may have in any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. §§ 982(a)(1) and 982(a)(8), whether in the possession or control of the United States, or in the possession or control of the defendant or defendant's nominees, or elsewhere. Those assets include, but are not limited to: (a) \$36,106.22 seized from Citizens Bank account #xxxxxx6441; (b) \$425.00 seized from Federal Credit Union account #xxxxx3025; (c) \$999.33 seized from Navy Federal Credit Union account #xxxx8829 held in the name of Russell R. Foreman; (d) \$183.33 seized from FanDuel account #xxx3300 held in the name of Russell Foreman; (e) \$282.49 seized from FanDuel account #xxx5854 held in the name of Chandler Simbeck; and (f) entry of a money judgment in the amount of \$367,552. The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of assets. Defendant knowingly and voluntarily

waives all constitutional, legal, and equitable defenses to the forfeiture of the assets described above, including any claim or defense under the Eighth Amendment to the United States Constitution, and any rights under Fed. R. Crim. P. 32.2.

The defendant admits and agrees that the conduct described in the Stipulation of Facts below provides a sufficient factual and statutory basis to establish that the requisite nexus exists between the specific property subject to forfeiture and the offenses to which defendant is pleading guilty. Pursuant to Fed. R. Civ. P. 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the Court find that the Government has established the requisite nexus and enter a preliminary order of forfeiture.

The United States agrees that any amount realized from the forfeiture of the assets listed above will be credited against the money judgment.

The United States Attorney's Office for the District of Colorado will recommend to the Attorney General that any net proceeds derived from the sale of judicially forfeited substitute assets be remitted or restored to eligible victims of the offenses for which the defendant has pleaded guilty, pursuant to 18 U.S.C. § 981(e), 28 C.F.R. pt. 9, and any other applicable laws, if the legal requirements for recommendation are met. The defendant understands that the United States Attorney's Office only has authority to recommend such relief and that the final decision of whether to grant relief rests solely with the Department of Justice, which will make its decision in accordance with applicable law.

The defendant understands that pursuant to 18 U.S.C. § 983, the seizing agency is required to send notice in non-judicial civil forfeiture matters. Having been advised of

said rights regarding notice, the defendant hereby knowingly and voluntarily waives his rights to notice being sent within the time frames in 18 U.S.C. § 983 and to having the property returned to him if notice is not sent within the prescribed time frames.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture, except as otherwise outlined in this agreement.

II. ELEMENTS OF THE OFFENSE(S)

The parties agree that the elements of wire fraud, in violation of Title 18, United States Code, Section 1343, are as follows:

First: the defendant devised or intended to devise a scheme to defraud or obtain money or property by means of false or fraudulent pretenses, representations or promises,

Second: the defendant acted with specific intent to defraud;

Third: the defendant used interstate wire communications facilities, or caused another person to use interstate or foreign wire communications facilities for the purpose of carrying out the scheme.

Fourth: the scheme employed false or fraudulent pretenses, representations, or promises that were material.

Tenth Circuit Pattern Jury Instructions (Criminal Cases), 2011, § 2.57 (updated 2021).

The parties agree that the elements of money laundering, in violation of Title 18, United States Code, Section 1957, are as follows:

First: the defendant knowingly engaged or attempted to engage in a monetary transaction;

Second: the defendant knew the transaction involved criminally derived property;

Third: the property had a value greater than \$10,000;

Fourth: the property was, in fact, derived from wire fraud; and

Fifth: the transaction occurred in the United States.

Ninth Circuit Pattern Jury Instructions (Criminal Cases), § 8.150 (2021) (Note: the Tenth Circuit does not have a pattern jury instruction for 18 U.S.C. § 1957).

III. STATUTORY PENALTIES

The maximum penalties for a violation of Count 5 (Wire Fraud) of the Indictment are: not more than 20 years' imprisonment; maximum term of supervised release of three years; maximum fine of \$250,000 or twice the gain or loss from the offense, or both imprisonment and a fine; \$100 mandatory victim's fund assessment fee; restitution of an amount to be determined at the time of sentencing.

The maximum penalties for a violation of Count 9 (Money Laundering) of the Indictment are: not more than 10 years' imprisonment; maximum term of supervised release of three years; maximum fine of \$250,000 or twice the gain or loss from the offense, or both imprisonment and a fine; \$100 mandatory victim's fund assessment fee; restitution of an amount to be determined at the time of sentencing.

IV. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including, but not limited to, the rights to possess firearms, vote, hold elected office, and sit on a jury.

V. STIPULATION OF FACTS

The factual basis for this plea is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense of

conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts that 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 presenting non-contradictory additional facts which are relevant to the Court's guideline computation, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

The parties agree the government would be able to prove the following facts at trial:

Count 5, Wire Fraud

Background Related to Pandemic-Related Relief Programs

The United States Small Business Administration ("SBA") is an executive-branch agency of the United States government that provides support to entrepreneurs and small businesses. In or around March 2020, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was enacted to provide emergency financial assistance to the millions of Americans suffering adverse economic effects caused by the COVID-19 pandemic. The CARES Act established several new temporary programs and expanded existing programs, including programs created or administered by the SBA.

The Economic Injury Disaster Loan ("EIDL") program was an SBA program that provided low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters. The CARES Act authorized the SBA to provide EIDLs to eligible small businesses experiencing substantial financial disruptions due to

the COVID-19 pandemic. In addition, the CARES Act authorized the SBA to issue advances of up to \$10,000 to small businesses, known as Economic Injury Disaster Grants (EIDGs). The amount of the advance was determined by the number of employees the applicant certified having. The advances did not need to be repaid.

To obtain an EIDL and/or EIDG, a qualifying business was required to submit an application to the SBA and provide information about its operations, such as the number of employees and the entity's gross business revenues and cost of goods sold in the twelve months prior to January 31, 2020. The amount of the loan, if approved, was determined based, in part, on the information provided concerning the number of employees, gross revenue, and cost of goods. Any funds issued under an EIDL or EIDG were issued directly by the SBA. EIDL funds were permitted to be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments.

Another source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP"). To obtain a PPP loan, the authorized representative of a business was required to state the business's average monthly payroll expenses and number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. A participating lender would then process the PPP loan application. If the PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were fully guaranteed by the SBA.

Between at least March 29, 2020 and October 6, 2020, defendant Russell

Foreman knowingly and with the intent to defraud submitted 7 fraudulent EIDL applications to the SBA on behalf of 4 different business names and two PPP loans under his own name. Two of the EIDL applications were approved and funded by the SBA. As a result of those fraudulent EIDL applications, LLCs created by Foreman received \$185,500 in EIDL proceeds. In addition, Foreman applied for two PPP loans in his name as a self-employed person and received the proceeds of one PPP loan in an amount of \$20,052. In the EIDL applications, Foreman knowingly and with the intent to defraud made false statements about the number of employees for each business entity, the gross revenues, the cost of goods sold and the date each business entity was formed. He also failed to disclose his criminal background on the applications.

A review of Foreman's email account obtained by search warrant revealed the following: (a) On March 29, 2020, Foreman emailed himself a document named 'Stimulus_Bill.pdf'. The document contained the legal text describing the Paycheck Protection Program and had various portions of it highlighted and notated; (b) On April 11, 2020, the following email exchange occurred:

Unnamed Individual: Hey whats up how are you? What you up to? Are you in halfway house? *Foreman:* I am doing good. I am just getting all my stuff together and trying to get all this money they are giving away with this stimulus package. All these grants and loans for self-employed individuals. No I am not in a half-way house. I have been staying at my sister's apartment for the last week and a half. What's up with you?

In 2013 and 2014 the defendant was convicted in the State of Colorado of

identity theft, theft of rental property and forgery. He was sentenced to the Colorado Department of Corrections. During 2019 and 2020, the defendant was on parole for those convictions.

Grand Luxury Marketing.

An EDIL application in the name of Grand Luxury Marketing (Grand Luxury) was submitted to the SBA on June 26, 2020. The application indicated that the registered agent of Grand Luxury was the defendant, Russell Foreman. The application indicated that Grand Luxury was established on February 22, 2019 and had annual gross annual revenues of \$596,000.00 with a cost of goods sold being \$137,000.00. In making the application, Foreman indicated that Grand Luxury had 13 employees. Based upon the formula for such loans, the eligible EDIL was the statutory maximum possible loan of \$150,000.00 ($\$596,000 - \$150,000 = \$459,000$ divided by two equals \$229,500). On August 31, 2020, the SBA funded the EDIL loan application of \$150,000.00. Foreman did not disclose on the application that he had a criminal record as was required in the application (see footnote 1). Foreman also indicated the business address of Grand Luxury was the same addresses he used in the ECS application, 600 17th Street, Suite 2800 South, Denver, Colorado.

In fact, Colorado Secretary of State records reflect Grand Luxury was formed on June 25, 2020 by the defendant, Russell Ray Foreman. Records of the IRS show that Grand Luxury applied for an Employee Identification Number (EIN) in June 2020.

When the loan was funded an electronic transfer of funds was sent from the SBA in Denver to Grand Luxury's account at First Bank in Denver. The funds were routed through numerous federal reserve banks in states other than Colorado before the funds

were deposited into the First Bank account in Denver.

Relevant Conduct, Wire Fraud

ECS. One EDIL application in the name of ECS Consulting LLC (ECS) was submitted to the SBA on June 18, 2020. The application indicated that the owner of ECS was the defendant, Russell Foreman. The application indicated that ECS was established on February 5, 2019 and had gross annual revenues of \$936,000.00 with a cost of goods sold being \$845,000.00. In making the application, Foreman indicated that ECS had 16 employees. Based upon the formula for such loans, the eligible EDIL was \$45,500.00 ($\$936,000 - \$436,000 = \$91,000$ divided by two equals \$45,500). On June 23, 2020, the SBA funded ECS with a \$10,000.00 EIDL cash advance grant and on June 26, 2020, the SBA funded the remainder of the loan of \$35,500.00. Foreman did not disclose on the application that he had a criminal record as was required in the application.¹

In fact, Colorado Secretary of State records reflect ECS was formed on April 21, 2020 by the defendant, Russell Ray Foreman. Records of the IRS show that ECS applied for an Employee Identification Number (EIN) in April 2020.

Russell Foreman business.

Foreman submitted an EIDL application in the business name of Russell Foreman on March 30, 2020. The application indicated the business was formed in September 2019 and had gross receipts of \$1,500.00, costs of goods sold of \$0, and

¹ In EIDL applications the following question is posed, "For any criminal offense – other than a minor vehicle violation – have you ever been convicted, plead guilty, plead nolo contendere, been placed on pretrial diversion or been placed on any form of parole or probation (including probation before judgment)?" To this question Foreman answered, "no."

one employee. A \$1,000.00 cash advance was issued by the SBA on April 16, 2020, but the EIDL was declined on April 17, 2020. Foreman did not disclose his criminal record.

PPP Loan Applications.

On May 14, 2020, Foreman submitted a PPP loan application to an approved SBA lender, Kabbage, Inc. Foreman claimed to have a monthly payroll of \$8,021.00. In support of the application, Foreman submitted a false 2019 Schedule C listing his consulting business name as Russell Ray Foreman. Foreman's 2019 tax returns showed these figures were false. Based upon his application, a PPP loan in the amount of \$20,052.00 was funded.

Other relevant conduct.

The defendant assisted codefendant Chandler Simbeck with making false EIDL applications, one of which was funded in an amount of \$150,000.00. An EIDL application in the name of Fusion Group (Fusion) was submitted to the SBA on June 27, 2020. The application indicated that Fusion was established on February 25, 2019 and had annual gross annual revenues of \$612,000.00 with a cost of goods sold being \$161,000.00. Based upon the formula for such loans, the eligible EIDL was the statutory maximum possible loan of \$150,000.00. Fusion's application indicated an address in Aurora, Colorado which was a mail stop address used by Russell Foreman. On August 31, 2020, the SBA funded the EIDL loan application of \$150,000.00. Simbeck did not disclose on the application that he had a criminal record as was required in the application. Colorado Secretary of State records show that Fusion was formed on June 25, 2020 by Simbeck and that an EIN was obtained that month.

Proceeds from the loan were disbursed shortly after the loan was funded. A \$60,000.00 check was issued by Simbeck to Vegisir Consults LLC, which had been formed in Colorado on August 28, 2020, by Simbeck. On October 6, 2020, a bank account of Russell Foreman received a wire transfer of \$55,000.00 from Vegisir Consults LLC.

Count 9, Money Laundering

The loan proceeds from the Grand Luxury loan application were received into a bank account of Grand Luxury Marketing which had been opened by Russell Foreman at First Bank in Denver, Colorado. Russell Foreman wrote a check for \$80,000.00 on the account payable to his sister, who resided Colorado. On or about September 1, 2020, the check was deposited into her account at Navy Federal Credit Union (NFCU). The deposit was made at a NFCU location at Buckley Air Force Base, Colorado which caused the funds to be kept within the NFCU credit union system located in Maryland. Russell Foreman had access to his sister's account and after the \$80,000.00 deposit was made, caused transfers totaling \$71,000.00 from her NCFU account to his personal account at NCFU.

VI. ADVISORY GUIDELINE CALCULATION

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. To aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing

Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies the matters which are in dispute.

The Guideline calculation below is the good faith estimate of the parties, but it is only an estimate. The parties understand that the government also has an independent obligation to assist the Court in making an accurate determination of the correct guideline range. To that end, the government may argue that facts identified in the presentence report, or otherwise identified during the sentencing process, affect the estimate below.

Count 5, Wire Fraud

- a) Under Section 2B1.1(a)(1), the base offense level is **7**.
- b) The following specific offense characteristics apply: There is a **12**-level increase pursuant to § 2B1.1(b)(1)(H) because the loss (including intended loss) was between \$250,000 and \$550,000.
- c) There are no victim-related, role-in-offense, obstruction, grouping, or multiple-count adjustments.
- d) The adjusted offense level is **19**.

Count 9 Money Laundering

- e) Under Section 2S1.1(a)(1), the base offense level is **19**.
- f) The following specific offense characteristics apply: There is a **1** level increase pursuant to § 2S1.1(b)(2)(A) because the defendant is convicted under § 1957.
- g) The resulting total offense level is **20**.
- h) Grouping adjustments do not apply. The highest resulting offense level is **20**.
- i) The parties agree the defendant should receive a 3-level reduction for acceptance of responsibility pursuant to § 3E1.1(a) and(b). The resulting total offense level is **17**.

- j) The parties understand that the defendant's criminal history computation is tentative and based on the defendant's prior convictions. The parties believe the defendant is in criminal history category **VI**.
- k) The career offender/criminal livelihood/armed career criminal adjustments do not apply.
- l) The advisory guideline range resulting from a level these calculations is **51 to 63** months. However, to be as accurate as possible, with the criminal history category undetermined at this time, the offense level(s) estimated above could conceivably result in a range from **24** months (bottom of Category I) to **63** months (top of Category VI). The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction.
- m) Pursuant to guideline § 5E1.2, assuming the estimated offense level above is correct, the fine range for this offense would be **\$10,000 to \$95,000**, plus applicable interest and penalties.
- n) Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is at least one but not more than three years.
- o) The government will seek a restitution order in an amount to be determined prior to sentencing and a final money judgment order for that same amount.

The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.

VII. ENTIRE AGREEMENT


The agreement disclosed to the Court is the 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 other terms, promises, conditions or assurances.

Date: 3/21/22




RUSSELL FOREMAN
Defendant

Date: 3/21/22



MARY BUTTERTON
Attorney for Defendant

Date: 3/22/22



ROBERT BROWN
Assistant U.S. Attorney