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| CLERK U S DISTRICT COURT DISTRICT OF ARIZONA | |
| BY | DEPUTY |

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21 Attorneys for the United States

22 UNITED STATES DISTRICT COURT
 23 DISTRICT OF ARIZONA

24 United States of America,
 25 Plaintiff,
 26 v.
 27 Austin VanScoyk,
 28 Defendant.

CR20-02736(JCH)(BGM)
 20-WI-1350-JCH (BGM)

PLEA AGREEMENT

29 The United States of America and Austin VanScoyk ("Defendant") agree to the
 30 following disposition of this matter:

PLEA

1
2 1. Defendant agrees to plead guilty to the single count Information charging
3 Defendant with a felony violation of Title 18 U.S.C. Section 371, Conspiracy to Commit
4 Wire Fraud, a Class D Felony.

5
6 ELEMENTS OF THE OFFENSE

7 2. Defendant is charged in the single count Information with conspiracy to
8 commit wire fraud in violation of Title 18 U.S.C. Section 371. In order to prove a violation
9 of Title 18 U.S.C. Section 371, the government must prove each of the following elements
10 beyond a reasonable doubt:
11

- 12 a. Two or more persons, in some way or manner, agreed to try to accomplish a
13 common and unlawful plan to commit wire fraud;
14
15 b. The defendant knew the unlawful purpose of the plan and willfully joined in it;
16 and
17
18 c. An overt act committed by at least one co-conspirator.

19 The elements of Wire Fraud are:

- 20 a. The defendant devised a scheme to defraud or to obtain money or property by
21 materially false or fraudulent pretenses, representations or promises or willfully
22 participated in such a scheme with knowledge of its fraudulent nature;
23
24 b. That the defendant acted with the intent to defraud, that is, acted knowingly and
25 with the specific intent to deceive, for the purpose of causing some financial or
26 property loss to another;
27
28 c. That in advancing, furthering, or carrying out the scheme, the Defendant or

1 Defendants transmitted any writing, signal, or sound by means of a wire, radio,
2 or television communication in interstate commerce or caused the transmission
3 of any writing, signal, or sound of some kind by means of a wire, radio, or
4 television communication in interstate commerce.
5

6 TERMS

7 3. The Defendant understands that this guilty plea is conditioned upon the
8 following terms, stipulations, and requirements.
9

10 Maximum Penalties

11 4. The Defendant understands that the maximum penalty for the single count
12 Information, Conspiracy to Commit Wire Fraud, in violation of Title 18 U.S.C. Section
13 371, is a fine of up to \$250,000, a term of up to five (5) years imprisonment, or both, and
14 a period of not more than three (3) years supervised release.
15

16 5. Pursuant to the United States Sentencing Guidelines (“Guidelines”) issued
17 pursuant to the Sentencing Reform Act of 1984, the Court shall:
18

19 (a) order Defendant to pay a fine, which may include the costs of probation,
20 supervised release or incarceration, unless, pursuant to Title 18, United States Code,
21 Section 3611 and Section 5E1.2(f) of the Guidelines, Defendant establishes the
22 applicability of the exceptions found therein;
23

24 (b) order Defendant to make restitution to any victim of the offense unless,
25 pursuant to Title 18, United States Code, Section 3663A and Section 5E1.1 of the
26 Guidelines, the court determines that restitution would not be appropriate in this case.
27
28

1 6. Pursuant to Title 18, United States Code, Section 3013, the court is required
 2 to impose a special assessment on the Defendant of \$100.00 for each offense to which the
 3 Defendant is pleading guilty. The special assessment is due at the time Defendant enters
 4 the plea of guilty, but in no event shall it be paid later than the time of sentencing.
 5

6 7. Defendant recognizes that pleading guilty may have consequences with
 7 respect to Defendant’s immigration status if Defendant is not a citizen of the United States.
 8 Under federal law, a broad range of crimes are removable offenses, including the offenses
 9 to which Defendant is pleading guilty. Removal and other immigration consequences are
 10 the subject of a separate proceeding, however, and Defendant understands that no one,
 11 including Defendant’s attorney or the District Court, can predict to a certainty the effect of
 12 Defendant’s conviction on Defendant’s immigration status. Defendant nevertheless
 13 affirms that Defendant wants to plead guilty regardless of any immigration consequences
 14 that this plea may entail, even if the consequence is Defendant’s automatic removal from
 15 the United States.
 16
 17
 18

19
 20 Agreements Regarding Sentencing

21 8. The government and Defendant stipulate that the total offense level in the
 22 U.S. Sentencing Guidelines for the offense to which Defendant is pleading guilty is
 23 calculated as follows:
 24

| | |
|--|-----------|
| Base Offense Level (§ 2B1.1(a)(2)) | 6 |
| Specific Offense Characteristic 2B1.1(b)(1)(H) | 14 |
| Acceptance of Responsibility (§ 3E1.1) | <u>-3</u> |

Total Offense Level 17

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9. Pursuant to Rule 11(c)(1)(B), the government and the Defendant stipulate ~~and agree~~ to an advisory sentencing guideline range of:

If Defendant's criminal history category is I, 24 to 30 months imprisonment;

If Defendant's criminal history category is II, 27 to 33 months imprisonment;

If Defendant's criminal history category is III, 30 to 37 months imprisonment;

If Defendant's criminal history category is IV, 37 to 46 months imprisonment;

If Defendant's criminal history category is V, 46 to 57 months imprisonment;

If Defendant's criminal history category is VI, 51 to 63 months imprisonment:

10. The defendant is free to request any sentence and move for any variances and departures he deems appropriate. Defendant understands that the court is neither a party to nor bound by this agreement and the court has complete discretion to impose the maximum sentence possible for the crime to which Defendant has pled. If the court imposes a sentence greater than the maximum term agreed upon by the parties or otherwise rejects the plea agreement, the Defendant may withdraw Defendant's guilty plea as authorized by Rule 11(d)(2)(A), Fed. R. Crim. P.

11. Pursuant to Fed.R.Crim.P. 11(c)(1)(B), provided the Defendant complies with the terms of this agreement, the government agrees to not bring further criminal charges against the Defendant for any conduct now known to the government related to the allegations in the Information.

1 14. If Defendant fails to comply with any obligation or promise pursuant to this
2 agreement, including the failure to appear at sentencing, the United States:

3 a. may, in its sole discretion, declare any provision of this agreement null and
4 void in accordance with paragraph 18 below and Defendant understands that Defendant
5 shall not be permitted to withdraw the plea of guilty made in connection with this
6 agreement;
7

8 b. may prosecute Defendant for any offense known to the United States for
9 which Defendant is responsible, and Defendant waives any statute of limitations, Speedy
10 Trial Act, and constitutional restrictions for bringing charges after the execution of this
11 agreement;
12

13 c. may argue for a maximum statutory sentence for the offenses to which
14 Defendant has pled guilty.
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1 Defendant files a notice of appeal or a habeas petition, notwithstanding this agreement,
2 Defendant agrees that this case shall, upon motion of the government, be remanded to the
3 district court to determine whether Defendant is in breach of this agreement and, if so, to
4 permit the government to withdraw from the plea agreement. This waiver shall not be
5 construed to bar a claim by the Defendant of ineffective assistance of counsel or of
6 “prosecutorial misconduct” (as that term is defined by Section II.B of Ariz. Ethics Op. 15-
7 01 (2015)).
8

9
10 Reinstitution of Prosecution

11 18. If the Defendant’s guilty plea is rejected, withdrawn, vacated, or reversed by
12 any court in a later proceeding, the government will be free to prosecute the Defendant for
13 all charges as to which it has knowledge, and any charges that have been dismissed because
14 of this plea agreement will be automatically reinstated. In such event, Defendant waives
15 any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth
16 Amendment to the Constitution as to the delay occasioned by the later proceedings.
17 Defendant understands that any statements made at the time of the change of plea or
18 sentencing may be used against Defendant in any subsequent hearing, trial or proceeding
19 as permitted by Fed.R.Crim.P. 11(f).
20
21

22 Perjury and Other Offenses

23
24 19. Nothing in this agreement shall be construed to protect the Defendant in any
25 way from prosecution for perjury, false declaration or false statement, obstruction of
26 justice, or any other offense committed by the Defendant after the date of this agreement.
27
28

Disclosure of Information to U.S. Probation Office

1
2 20. Defendant understands the United States' obligation to provide all
3 information in its file regarding Defendant to the United States Probation Department.

4
5 21. Defendant will cooperate fully with the United States Probation Department.
6 Such cooperation will include truthful statements in response to any questions posed by
7 the Probation Department, including, but not limited to (1) all criminal history information,
8 i.e., all criminal convictions as defined under the Sentencing Guidelines; (2) all financial
9 information, e.g., present financial assets or liabilities that relate to the ability of Defendant
10 to pay a fine or restitution; (3) all history of drug abuse which would warrant a treatment
11 condition as part of sentencing; and (4) all history of mental illness or conditions which
12 would warrant a treatment condition as a part of sentencing.
13
14

15 Effect on Forfeiture Proceedings

16 22. Nothing in this agreement shall be construed to protect the Defendant from
17 civil forfeiture proceedings or prohibit the United States from proceeding with and/or
18 initiating an action for civil forfeiture.
19

20 23. Further, this agreement does not preclude the United States from instituting
21 any civil proceedings as may be appropriate now or in the future.
22

23 WAIVER OF DEFENDANT'S RIGHTS AND FACTUAL BASIS

24 Waiver of Rights

25 I have read each of the provisions of the entire plea agreement with the assistance
26 of counsel and understand its provisions. I have discussed the case and my constitutional
27 and other rights with my attorney. I understand that by entering my plea of guilty I will be
28

1 giving up my rights as follows: to plead not guilty; to trial by jury; to confront, cross-
2 examine, and compel the attendance of witnesses; to present evidence in my defense; to
3 remain silent and refuse to be a witness against myself by asserting my privilege against
4 self-incrimination; all with the assistance of counsel; to be presumed innocent until proven
5 guilty beyond a reasonable doubt; to a restitution schedule set by the Court for payment of
6 restitution during any period of incarceration; and, to appeal or file any other challenge to
7 my conviction or sentence.
8

9
10 I agree to enter my guilty plea as indicated above on the terms and conditions set
11 forth in this agreement.

12 I have been advised by my attorney of the nature of the charge to which I am entering
13 my guilty plea. I have been advised by my attorney of the nature and range of the possible
14 sentence, and that I will not be able to withdraw my guilty plea if I am dissatisfied with the
15 sentence the court imposes.
16

17 My guilty plea is not the result of force, threats, assurance or promises other than
18 the promises contained in this agreement. I agree to the provisions of this agreement as a
19 voluntary act on my part and I agree to be bound according to its provisions.
20

21 I fully understand that, if I am granted probation or placed on supervised release by
22 the Court, the terms and conditions of such probation/supervised release are subject to
23 modification at any time. I further understand that, if I violate any of the conditions of my
24 probation/supervised release, my probation/supervised release may be revoked and upon
25 such revocation, notwithstanding any other provision of this agreement, I may be required
26 to serve a term of imprisonment or my sentence may otherwise be altered.
27
28

1 I agree that this written plea agreement and any addendum, if any, contains all the
2 terms and conditions of my plea and that promises made by anyone (including my attorney)
3 that are not contained within this written plea agreement are without force and effect and
4 are null and void.

5
6 I am satisfied that my defense attorney has represented me in a competent manner.

7 I am fully capable of understanding the terms and conditions of this plea agreement.

8
9 I am not now on or under the influence of any drug, medication, liquor, or other intoxicant
10 or depressant, which would impair my ability to fully understand the terms and conditions
11 of this plea agreement.

12 Factual Basis

13
14 I further agree that the following facts accurately describe my conduct in connection
15 with the offense to which I am pleading guilty and that if this matter were to proceed to
16 trial the government could prove these facts beyond a reasonable doubt:

17
18 From in or about March 18, 2020 through in or about August 7, 2020,
19 in Safford, Arizona, Austin VanScoyk, Jonathan VanScoyk and Sam Fiedler
20 conspired, confederated, and agreed to commit wire fraud by submitting
21 fraudulent Paycheck Protection Program ("PPP") applications for four
22 entities: Bright Edge, Yellow Turtle, Aston Homes, and Grand American. At
23 the time of the PPP application Grand American, owned by Jonathan
24 VanScoyk, was operating on a limited basis. In the PPP application and
25 supporting documents, Austin VanScoyk, Jonathan VanScoyk and Sam
26 Fiedler claimed that the four entities had between 36 and 171 employees and
27 hundreds of thousands of dollars in monthly payroll, neither of which was
28 true.

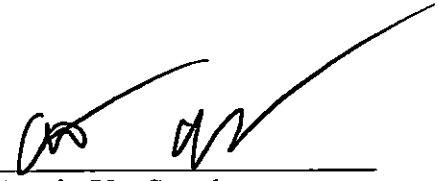
29
30 In support of the applications, Sam Fiedler prepared and submitted
31 fraudulent IRS tax forms 941 and fraudulent payroll documents. Austin
32 VanScoyk and Sam Fiedler knew that the applications and supporting
33 documents were fraudulent. During the course of the conspiracy Jonathan
34 VanScoyk became aware that the application and supporting documents were

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fraudulent. On April 26, 2020, a loan of \$638,300 was issued to Bright Edge. On April 30, 2020 a loan of \$594,830 was issued to Grand American Homes. Before receiving the loan funds, but after submitting loans, Austin VanScoyk, Sam Fiedler, and Jonathan VanScoyk took various steps to convince non-employees to purport to be employees of Bright Edge or Grand American Homes.

11-3-20
Date

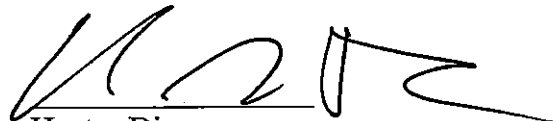

Austin VanScoyk
Defendant

DEFENSE ATTORNEY'S APPROVAL

1
2 I have discussed this case and the plea agreement with my client in detail and have
3 advised the Defendant of all matters within the scope of Fed. R. Crim. P. 11, the
4 constitutional and other rights of an accused, the factual basis for and the nature of the
5 offense to which the guilty plea will be entered, possible defenses, the consequences of the
6 guilty plea (including the maximum statutory sentence possible), and that the Defendant is
7 waiving the right to appeal or otherwise challenge the conviction and sentence. I have
8 discussed the concept of the advisory Sentencing Guidelines with the Defendant. No
9 assurances, promises, or representations that are not contained in this written agreement
10 have been given to me or to the Defendant by the United States or any of its representatives.
11 I have concluded that the entry of the plea as indicated above on the terms and conditions
12 set forth in this agreement are in the best interests of my client. I agree to make a bona fide
13 effort to ensure that the guilty plea is entered in accordance with all the requirements of
14 Fed. R. Crim. P. 11.
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21
22 12-3-2020

23 Date



Hector Diaz
Attorney for Defendant


GOVERNMENT'S APPROVAL

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth are appropriate and are in the best interests of justice.

MICHAEL BAILEY
United States Attorney
District of Arizona

Daniel S. Kahn
ACTING CHIEF, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

12.3.2020
Date


SII MOORE
Trial Attorney, Fraud Section
United States Department of Justice
Jane L. Westby
Assistant U.S. Attorney