IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 19-cr-00408-REB

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. RICHARD SEARS,

Defendant.

PLEA AGREEMENT

The United States of America (the government), through Tim Neff, Assistant United States Attorney for the District of Colorado, and the defendant, Richard Sears, personally and by counsel, John Richilano, hereby submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1.

I. AGREEMENT

Defendant's Obligations:

(1) The Defendant agrees to plead guilty to the following charges in the Superseding Indictment: Count 1 – Mail Fraud in violation of 18 U.S.C. § 1341 and 2, and Count 10 - Money Laundering in violation of 18 U.S.C. § 1957.

(2) 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 unless it meets one of the following criteria: (1) the sentence exceeds the maximum penalty provided in the statute of conviction; (2) the sentence exceeds the advisory guideline range that applies to a total offense level of **25** (the "total offense level" is the offense level that results after applying all adjustments from Guideline chapters 2-4, including acceptance of responsibility); or (3) the government appeals the sentence imposed. If any of these three 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 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.

(3) The Defendant agrees to make restitution to the victims identified in attached Exhibit No. 1 in the total amount of $4,965,919. (As noted below in the estimated guidelines portion of this agreement, the Defendant reserves the right to contest the "loss amount" for the offense.).

Government's Obligations:

(1) The Government agrees to dismiss all remaining counts in the

superseding indictment (except counts 1 and 10 to which the Defendant is pleading guilty). The Government also agrees to dismiss the original indictment as well.

(2) The Government agrees not to pursue any additional charges against the Defendant based on conduct known to the U.S. Attorney=s Office for the District of Colorado.

(3) The Government agrees to recommend a sentence to four (4) years of imprisonment.

(4) The Government agrees that a four level downward variance is appropriate based on various factors to include the Defendant's age, health, and medical condition (2 levels) and the unique circumstances of the loss amount as it relates to the Defendant's investment program (2 levels). The Government further agrees that irrespective of the amount of any variance ultimately granted/not granted, the Government will recommend a four (4) year sentence to imprisonment. (The Government's variance concession is not being based on Covid-19 or any other factors related to the pandemic).

II. ELEMENTS OF THE OFFENSE

The parties agree that the elements of the offense to which this plea is being tendered are as follows:

Count 1

Mail Fraud and Aiding and Abetting

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, that is described in the Superseding Indictment;

Second: the defendant acted with specific intent to defraud or obtain money or property by means of false pretenses, representations or promises;

Third: the defendant mailed something or caused another to mail something through the United States Postal Service or a private commercial interstate carrier for purpose of carrying out the scheme.

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

A "scheme to defraud or obtain money or property by means of false pretenses, representations or promises" is conduct intended to or reasonably calculated to deceive persons of ordinary prudence or comprehension.

A "scheme to defraud" includes a scheme to deprive another of money, property or the intangible right of honest services.

An "intent to defraud or obtain money by false pretenses, representations or promises" means an intent to deceive or cheat someone.

A representation is "false" if it is known to be untrue or is made with reckless indifference as to its truth or falsity. A representation would also be "false" when it constitutes a half truth, or effectively omits or conceals a material fact, provided it is made with intent to defraud.

A false statement is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of the person or entity to which it is addressed.

What must be proved beyond a reasonable doubt is that the defendant knowingly devised or intended to devise a scheme to defraud that was substantially the same as the one alleged in the indictment, and that the use of the mails was closely related to the scheme, in that the defendant either mailed something or caused it to be mailed in an attempt to execute or carry out the scheme. To "cause" the mails to be used is to do an act with knowledge that use of the mails will follow in the ordinary course of business or where such use can reasonably be foreseen even though the defendant did not intend or request the mails to be used.

Each separate use of the mails in furtherance of a scheme to defraud constitutes a separate offense.

' 2.56, *Tenth Circuit Pattern Jury Instructions* (2015).

Aid and Abet

This law makes it a crime to intentionally help someone else commit a crime. The Defendant has been charged with aiding and abetting the offense charged in the Information. The following elements need be proven before a person can be found guilty as an aider and abettor:

First: someone else committed the charged crime, and

Second: the defendant intentionally associated himself in some way with the crime and intentionally participated in it as he would in something he wished to bring about. This means that the government must prove that the defendant consciously shared the other person's knowledge of the underlying criminal act and intended to help him.

The defendant need not perform the underlying criminal act, be present when it is performed, or be aware of the details of its commission to be guilty of aiding and abetting. But a general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of a crime and knowledge that a crime is being committed are also not sufficient to establish aiding and abetting.

10th Cir. Pattern Jury Instructions, § 2.06 (2018)

Count 10

Engaging in a Monetary Transaction In Property Derived from Specified Unlawful Activity

First: the defendant knowingly engaged or attempted to engage in a "monetary transaction," as defined below;

Second: that the monetary transaction was of a value greater than $10,000;

Third: that the monetary transaction involved criminally derived property;

Fourth: that criminally derived property was derived from specified unlawful activity;

Fifth: that the defendant knew that the monetary transaction involved criminally derived property; and

Sixth: that the monetary transaction took place within the United States.

"Criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense.

"Monetary Transaction" means the deposit, withdrawal, or transfer, in or affecting interstate or foreign commerce, by, through or to a financial institution.

The government is not required to prove that the defendant knew that the offense from which the "criminally derived property" was derived constituted "specific unlawful activity" as defined by the statute creating this offense. The government must prove, however, that the defendant knew that the involved property was obtained or derived from the commission of a crime.

Pattern Crim. Jury Instr. 5th Cir. 2.77 (2015)

18 U.S.C. § 1957. (No Tenth Circuit pattern instruction)

III. STATUTORY PENALTIES

The maximum statutory penalties for mail fraud in violation of 18 U.S.C. §§ 1341 and 2 are not more than 20 years' imprisonment; not more than a $250,000 fine, or both; not more than 3 years' supervised release; and a $100 special assessment fee.

The maximum statutory penalties for money laundering in violation of 18 U.S.C. § 1957 are not more than 10 years' imprisonment; not more than a $250,000 fine, or both; not more than 3 years' supervised release; and a $100 special assessment fee.

If a term of probation or supervised release is imposed, any violation of the terms and/or conditions of supervision may result in an additional term of imprisonment.

IV. COLLATERAL CONSEQUENCES

This felony 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. The conviction may also carry with it significant immigration consequences, including removal and deportation depending on the Defendant's status within the United States.

V. 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. That basis 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 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 agree as follows:

Defendant's Cattle Program

Beginning on or about June 5, 2008, and continuing through and including on or about May 6, 2015, defendant RICHARD K. SEARS ("SEARS") and another person identified as "Person A", operated a cattle ownership/investment program ("herd owner program") in Colorado. During this time period, SEARS represented to potential herd owners (hereafter the government will use the term "investors" to describe these individuals, but Mr. Sears believes the terms "herd owner," "cattle owner," or simply "owner" are more accurate) in his program that he was the president and/or owner of various corporations engaged in the business of raising and selling cattle. During this same time period, SEARS also operated an outfitting business referred to as Trophy Outfitters, Inc. which provided guiding services to big game hunters.

SEARS operated his cattle investment program for cows and heifers using the following Colorado corporations which he controlled:

(A) Apache Park Livestock, Inc.,
(B) Private Land Bucks and Bulls, Inc.,
(C) Rocky Mountain Romangus, Inc., and
(D) Trophy Outfitters, Inc.

SEARS maintained multiple leases on several agricultural and ranching properties in Southern Colorado. Depending on the terms of a given lease agreement, SEARS and his corporations had the right to graze cattle, conduct outfitting business, and/or farm on such properties. During the course of his program, neither SEARS nor any of his corporations ever actually owned any agricultural or ranching properties.

The herd owner program had three phases.

A. Phase I: Mother Cows

In 2008 and 2009, Mr. Sears contracted to purchase heifers in Colorado, feed them, graze them, vet them, brand them, and breed them. He promised a 10% leaseback fee back to the owners for his efforts. His only compensation was the calves, which were his. He would sell the males and keep the females for breeding stock with Romagnola bulls, which he owned, to develop his Rocky Mountain Romangus breed (RMR), which did not yet exist. At the end of the 5-year contract term, he promised to return the mother cows to the owner.

B. Phase II: Angus Herd

The next phase began in 2009, when his contracts specified that the herd owners would own Angus heifers. These Angus herd contracts had the same terms, imposing

on himself the same responsibilities to completely care for the animals, to pay annual leaseback fees, and for him to keep the calves as his only compensation.

C. Phase III: Rocky Mountain Romangus (RMR)

By 2011, Mr. Sears had numerous herd owners under contract, and pursuant to those contracts he had purchased, and was caring for, a number of Angus heifers. (The Defendant maintains that he possessed approximately 2300 head of Angus heifers. The Government submits this figure was substantially lower at this point in time). By February of that year, Mr. Sears maintains that he had enough Angus mother cows and blended-breed calves born from breeding with his Romagnola bulls to enter into the third phase of his breeding program. (The Government disputes that Sears possessed the adequate number of cattle at this time to begin such a program). Specifically, starting in 2011, Mr. Sears began solicitation for this third-phase of his program which specified that he would deliver the contract number of Rocky Mountain Romangus (RMR) after three years. The time period of performance under these contracts (three years vs. five years) was not the only difference from the earlier two phases. Unlike the earlier contracts, "Mother Cow" or "Angus Herd," no RMR cows yet existed for Mr. Sears to purchase – he was still in the process of selective breeding them.

The Government further maintains that as part of the scheme, SEARS and his corporations stopped purchasing cows on behalf of investors by approximately September of 2011, yet SEARS continued to collect funds from new investors after such date while continuing to promise such new investors he would purchase and brand

cows on their behalf as part of the cattle investment program. The Defendant disputes the facts in this specific paragraph.

As part of the overall cattle program, SEARS sent, or caused to be sent, annual mass mailings (also referred to as "advertisements") to potential investors[1] inviting them to participate in his cattle investment program selling Angus and "Romangus" beef cows and heifers (collectively referred to as "cows"). SEARS' advertisements represented that his program was offered "exclusively to sportsmen" and provided investors with the chance to own a "tangible asset" that produced a "great return". SEARS typically directed his advertisements for his program to individuals holding hunting licenses throughout the United States. SEARS offered potential investors the right to receive an annual hunt discount from SEARS and his outfitting business should the investor elect to invest in the program.

Further as part of the program, SEARS' advertisements described the basic terms of his investment program and contained various inducements, which included:

(A) For a set "entry fee," SEARS promised to purchase a specific number of cows for the benefit of the investor who would become the "owner" of the cows. In later advertisements, SEARS represented that for a fee, he was offering the investor the unique opportunity to purchase from SEARS a special breed of cows which he was developing through the herd owner programs.

(B) SEARS stated that the investor would then agree to "leaseback" the cattle to SEARS for a set period of time (usually a three or five year lease term), during which time SEARS would be solely responsible for all costs related to the feed, care and management of the investor's cows, including breeding the investor's cows.

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[1] For the sake of simplicity the government's term will be used, even though Mr. Sears disputes its accuracy.

(C) On an annual basis, SEARS agreed to pay the investor a "cash return" or "leaseback payment" of approximately 10%. In later advertisements, the investor was also given the option to take additional cows instead of receiving a cash leaseback payment.

(D) At the end of the parties' contract, SEARS guaranteed that he would buy back the cattle from the investor for not less than the original price on the contract should the investor so request at his or her discretion. The investor also had the option to extend the duration of the leaseback agreement beyond the expiration of the original contract.

(E) As part of the agreement with the investor, SEARS, for his own benefit, was entitled to keep, raise, breed and/or sell all calves born from the investor's cows, also referred to as the "calf crop."

Further as part of his program, SEARS required that investors sign and execute a written contract along with SEARS which set forth the parties' respective commitments and obligations under the cattle investment program. SEARS typically entitled each contract as either a "Mother Cow Leaseback Agreement" or "Cattle Leaseback Agreement," and on limited occasion, SEARS referred to his contract as a "Joint Venture Agreement". (collectively referred to as "investor contracts").

The Scheme and False Promises

As time passed the cattle program became unwieldy and was beset by adverse market, industry, and weather conditions. At some point the program became a scheme to defraud. The Government asserts that the scheme to defraud began in September 25, 2011 and continued through May 6, 2015. Mr. Sears asserts that the moment began in September 2013, during the last year of phase III, and continued thorough May 6, 2015.

As part of the scheme, SEARS falsely promised to brand each investor's cows

with a unique brand specifically owned by and assigned to each investor. Often, SEARS only branded a fraction of the number of the cows which he had promised under the contracts. In some instances where SEARS had developed enough RMR cows under a given contract, SEARS failed to brand those cows as promised.

As part of the scheme, SEARS frequently converted the money paid by investors for the purchase of cattle to his own use and benefit. Mr. Sears asserts that, by the terms of the cattle contracts in all three phases of the program, money provided by herd owners was his to use in pursuit of his obligations under the contracts, as long as he complied with those obligations. The fraud arose as, over time, Mr. Sears failed to live up to some of those obligations and concealed such failures from herd owners.

As part of the scheme, SEARS promised investors -- in both the investor contracts and advertisements -- that SEARS or one of his corporations would pay an annual "cash return" or annual "leaseback payment" to the investor of approximately 10%. However, at times SEARS paid annual leaseback payments to investors which lulled investors into believing that their investment was successful and that SEARS' cattle program was operating consistent with the terms of the parties' agreement. In some instances, SEARS used new investor funds for cows to pay leaseback payments owed to earlier investors. Over time, SEARS began to make fewer cash returns or leaseback payments to investors and completely stopped making such annual payments to some investors despite his promises.

Investors regularly relied upon SEARS' guarantee to buy back their cows at the original price when deciding to initially join the investment program. Instead, SEARS

generally failed to buy back any investors' cows at full price despite his original promises.

As part of the scheme, SEARS persuaded earlier investors in his program to extend the duration of the length of their investor contracts usually by one or two years as they neared expiration of their agreements. SEARS obtained such contract extensions for purposes of avoiding his contractual obligation to make leaseback payments, repay investors the full amount of their initial purchase price for cows, and to conceal the fact that his cattle breeding program was failing.

As part of his scheme, SEARS used other Colorado entities at times to conceal and/or conduct his financial activities related to the handling of investors' funds to include Apache Park Land and Cattle Company, Inc. and Rio Valle Farms, LLC. At times, SEARS also utilized Person A, and family members to assist him in opening bank accounts and conducting financial transactions in furtherance of the scheme. SEARS also made misleading statements or directed Person A to make misleading statements to existing investors regarding the status of their cattle investment.

As part of the scheme, SEARS was aware by at least September 11, 2013, that he was unable to meet his contractual obligations owed to investors under his program. Specifically, SEARS was unable to make annual scheduled leaseback payments to investors as well as fulfill his guarantee to investors that he would buy back investors' cow herds as promised. When attempting to obtain an extension on an investor contract in September of 2013, SEARS stated in a letter to Investor-1 that his cattle investment program was suffering from a series of operational setbacks and financial

problems (also referred to as "material facts") to include:

(A) "[W]e have lost pasture grass as a result of the extreme and prolonged record setting drought."

(B) "Our irrigation water allocations have been cut by 100% on one of our farms (zero water allocations) and cut 65% on another farm."

(C) "The only way we can afford to purchase this quantity of hay to sustain winter feeding is to defer leaseback payments for one year."

(D) "Our entire cow herd has been quarantined with 'Tricohomoniasis'... a venereal disease in cattle...."

(E) "The quarantine restricts the selling of any production cow or bull except for slaughter and also the purchase of production cattle added to the infected herd."

(F) "...It will take at least a year to get [the Tricohomoniasis] cleaned up."

(G) As a result of this disease, "We have lost between 45 and 50% of our calf crop due to aborted calves. This is a catastrophic loss for us and has caused a severe hardship and impacts our ability to meet our contractual obligations."

(H) "At this time an early buy out of the herd by me is not possible given the current quarantine order and my financial status."

As part of the scheme, SEARS continued to actively solicit and collect funds from approximately 12 additional investors (referred to as "later investors") in his program after September of 2013. SEARS received in excess of $800,000 from these later investors. However, when entering into contracts and collecting funds from these later investors, SEARS purposely failed to disclose the material facts related to operational setbacks and financial problems as set forth in SEARS' letter to Investor-1 on September 11, 2013. (As stated above, Mr. Sears asserts that this is when the fraud began.)

As part of his scheme, SEARS sometimes misrepresented to investors the true number of cows in his possession to conceal the fact that he was not performing as he had promised investors. On March 7, 2014, Investor-3, using an agent, attempted to exercise his right under his investment contract to "personally inspect" his cattle and obtain an inventory of his cows. During the inspection, Investor-3's agent learned that SEARS did not have an accurate inventory of Investor-3's cows and that SEARS did not have the required number of Investor-3's cows as required by the parties' contracts. Investor-3 then filed a civil lawsuit. On May 2, 2014, Investor-3 obtained a court order in the District Court in Pueblo, State of Colorado which directed that SEARS' cattle be marshalled, identified and inventoried. Brand inspectors with the State of Colorado Department of Agriculture inventoried cattle in SEARS' possession as a result of the court order related to Investor-3. The inventory ultimately established that as of July of 2014, SEARS possessed substantially fewer cows than contractually promised to Investor-3.

Government's Supplemental Factual Allegations RE: Scheme – Defendant Objections

The Government submits that the following factual assertions should also be considered as part of relevant conduct when considering the offense conduct.

As part of his scheme, SEARS also failed to disclose to later investors the material fact that as of December 9, 2013, he owed and agreed to pay the Internal Revenue Service ("I.R.S.") $278,274 in restitution in connection with his criminal case involving his willful failure to file an income tax return, *U.S. v. Richard Sears*, Case No. 13-cr-00180-MSK (District of Colorado). The Defendant disputes this assertion.

As part of his scheme, SEARS entered into a contract with Investor-2 on April 16, 2014, in which SEARS promised to sell the investor 25 cows which he would brand for the investor in exchange for $55,000. Instead, on approximately June 4, 2014, SEARS converted a portion of Investor-2's funds to his own use when he used $27,000 for purposes of making a restitution payment to the I.R.S. in connection with Case No. 13-cr-00180-MSK. SEARS failed to ever acquire and brand any cows on behalf of Investor-2. The Defendant disputes this assertion.

The inventory conducted by brand inspectors as a result of Investor-3 also showed that by July of 2014, SEARS possessed substantially fewer cows than he was contractually obligated to possess for all of his other investors. The Defendant disputes this assertion.

Count 1 – Mail Fraud – The Mailing

On October 20, 2014, for the purpose of executing the scheme described above, the Defendant used the U.S. Mails to cause a "leaseback" payment to Investor-4. SEARS made the payment in the form of a check in the amount of $5,666 which he mailed from Colorado to Washington where Investor-4 lived. The purpose of the payment was to lull the investor into believing that SEARS' cattle investment program was legitimate and financially viable when in fact the program had already failed and SEARS was preparing to file for bankruptcy and windup his operations.

Count 10 - Money Laundering

In early 2015, SEARS engaged in a monetary transaction in criminally derived property of a value greater than $10,000, which property was derived from specified

unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Sections 1341 and 2. Specifically, in late 2014, Sears received and deposited into his bank account a total of $110,000 in funds from Investor-5 and Investor-6 ($55,000 each) as part of his mail fraud scheme. Shortly thereafter, on January 9, 2015, SEARS made a withdrawal of the $110,000 in investor funds from his personal bank account at Wells Fargo Bank and used the funds for personal purposes. Previously, SEARS had promised Investor-5 that such funds would be used in the course of his cattle investment program.

Restitution

As part of the disposition in this matter, the Defendant agrees as set forth in Part I of this Agreement to pay restitution in the total amount of $4,965,919 to the victims identified in Exhibit No. 1. The Defendant stipulates that such victims were directly and proximately harmed as a result of his actions.

Loss Amount and Disputed Matters

The parties dispute the amount of loss from the scheme which is to be used for purposes of calculating the advisory guidelines.

The Government maintains that the amount of loss amount from the scheme was approximately $3,340,705. Thus, the Government maintains that the amount of loss under the guidelines was between $1,500,000 and $3,500,000 (USSG § 2B1.1(b)(1)(I)). The Government maintains that the fraudulent conduct in the mail fraud scheme began on approximately September 25, 2011, and continued through May 6, 2015.

The Defendant disputes the Government's loss amount figure and reserves the

right to contest such amount at sentencing. The Defendant maintains that the proper amount of loss amount from the misconduct was approximately $800,000 to $1,100,000 Thus, the Defendant maintains that the amount of loss under the guidelines was between $550,000 and $1,500,000 (USSG § 2B1.1(b)(1)(H). The Defendant maintains that the fraudulent conduct in the mail fraud scheme began on approximately September 2013 and continued through May 6, 2015.

ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

1. The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the particular 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. In order 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.

2. The Guideline calculation below is the good-faith estimate of the parties, but it is only an estimate. Although the government is obligated to make the sentencing recommendation tied to a total offense level of 25 as set forth in the Agreement section above, the parties understand that the government has an independent obligation to assist the Court in making an accurate determination of the correct guideline range. To that end, the government may make legal or factual arguments that affect the estimate below.

A. The base guideline for Mail Fraud is § 2B1.1(a)(1), with a base offense level of 7.

B. The parties agree (except where noted) that the following specific offense characteristic apply:

(1) The Government maintains that a 16-level increase applies pursuant to § 2B1.1(b)(1)(I) because the loss was between $1,500,000 and $3,500,000. The Defendant maintains that a 14-level increase applies pursuant to § 2B1.1(b)(1)(H) because the loss was between $550,000 and $1,500,000.

(2) There is a 2-level increase pursuant to § 2B1.1(b)(2)(A)(i) because the offense involved 10 or more victims.

C. There are no victim-related or obstruction of justice adjustments that apply.

D. The Defendant is to receive a 2-level increase for his role in the offense as that of an organizer, leader, manager, and supervisor in the criminal activity pursuant to § 3B1.1(c).

E. Under § 2S1.1(b)(2), a 1-level increase is imposed for the conviction of money laundering ,18 U.S.C. § 1957, which is added to offense level for the mail fraud offense. (Note: Under § 2S1.1, application note 6, the two offenses group as closely related counts under § 3D1.2(c). The Defendant is pleading guilty to money laundering (count 10) which involves laundered funds which were derived from the mail fraud offense (count 1)).

F. The adjusted offense level is therefore 28 (Government), and 26

(Defendant).

G. Acceptance of Responsibility: The parties agree that the defendant should receive a 3-level adjustment for acceptance of responsibility. The resulting offense level therefore would be **25** (Government) and **23** (Defendant).

H. Criminal History Category: The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions. Based on information currently available to the parties, it is estimated that the defendant's criminal history category would be **II** based upon a total of + 3 criminal history points. Specifically, the Defendant was convicted of a federal, misdemeanor tax offense in 2014 (3 counts of failure to file tax return, District of Colo. Case No. 13-cr-00180-MSK) for which he received probation; thus, he is assessed + 1 criminal history point. §4A1.1(c). Because he was on probation during the time of the present offense, he also receives + 2 points. §4A1.1(d).

I. Imprisonment: The advisory guideline range resulting from these calculations is 63-78 months (Government) and 51-63 months (Defendant). However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level estimated above could conceivably result in a range from 57 months (bottom of Category I) to 137 months (top of Category VI) (Government), or 46 months (bottom of Category I) to 115 months (top of Category VI) (Defendant). The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction. The estimated guideline range does not take

into account any downward variance which is contemplated by the parties in this case. (The parties acknowledge and agree that it is solely within the Court's discretion to grant any variance request).

J. Fine: Pursuant to guideline § 5E1.2, the fine range for this offense would be $20,000 to $200,000, plus applicable interest and penalties.

K. Supervised Release: Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is not more than 3 years.

L. Restitution: The Defendant agrees to pay restitution as outlined above in Part 1 of the Plea Agreement.

The parties understand that although the Court will consider the parties= estimate, the Court must make its own determination of the guideline range. In doing so, the Court is not bound by the position of any party.

No estimate by the parties regarding the guideline range precludes either party from asking the Court, within the overall context of the guidelines, to depart from that range at sentencing if that party believes that a departure is specifically authorized by the guidelines or that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the advisory guidelines. Similarly, no estimate by the parties regarding the guideline range precludes either party from asking the Court to vary entirely from the advisory guidelines and to impose a non-guideline sentence based on other 18 U.S.C. § 3553 factors.

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.

VI. 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: 5-18-21

Richard Sears
Defendant

Date: 5/6/21

John Richilano
Attorney for Defendant

Date: 5-6-21

s/ Tim Neff
Tim Neff
Assistant U.S. Attorney