

AF Approval



Chief Approval



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:16-cr-36-T-33TGW

MARCIA CAULDER

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by A. Lee Bentley, III, United States Attorney for the Middle District of Florida, and the defendant, Marcia Caulder, and the attorney for the defendant, Charles Lykes, Jr., Esquire, mutually agree as follows:

A. Particularized Terms

1. Count Pleading To

The defendant shall enter a plea of guilty to Count One of the Information. Count One charges the defendant with Conspiracy to Commit Wire and Mail Fraud, each affecting a financial institution, in violation of 18 U.S.C. § 371.

2. Maximum Penalties

Count One carries a maximum sentence of five years imprisonment; a fine of \$250,000; a term of supervised release of not more than three years; and a special assessment of \$100 per felony count for individuals, and \$400 per felony count for persons other than individuals, such as

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corporations. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense(s), and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:


- First: two or more persons, in some way or manner, agreed to try to accomplish a common and unlawful plan to commit wire fraud and mail fraud, as charged in the Information;
- Second: the Defendant knew the unlawful purpose of the plan and willfully joined in it;
- Third: during the conspiracy, one of the conspirators knowingly engaged in at least one overt act as described in the information; and
- Fourth: the overt act was committed at or about the time alleged and with the purpose of carrying out or accomplishing some object of the conspiracy.

4. Indictment Waiver

Defendant will waive the right to be charged by way of indictment before a federal grand jury.

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant

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with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to the plea agreement.

6. Restitution to Victims of Offense of Conviction

Pursuant to 18 U.S.C. § 3663(a) and (b), and 3663A(a) and (b), the defendant agrees to make full restitution to any person or entity that lent money to Smith Advertising through bridge loans or factoring. With respect to restitution flowing from factoring through RMF, the defendant agrees that the restitution shall be made directly to the individual members of RMF.

7. Acceptance of Responsibility - Three Levels


At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG §3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.4., the United States agrees to file a motion

pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

8. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both.

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If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

9. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or incriminate any person,

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or should the defendant fail to voluntarily and unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and may either seek reinstatement of or refile such charges and prosecute the defendant thereon in the event such charges have been dismissed pursuant to this agreement. With regard to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by rescission of any order dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United States may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement,

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and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

(4) The government may use against the defendant the defendant's own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the United States, the United States may move the Court to declare this entire plea agreement null and void.

11. Forfeiture of Assets


The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 982(a)(2)(A), whether in the possession or

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control of the United States, the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, a forfeiture money judgment representing the proceeds of the fraud, in an amount to be determined at sentencing.

The defendant also hereby agrees to waive all constitutional, statutory and procedural challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1)(A), the United States and the defendant request that promptly after accepting this Plea Agreement, the Court make a determination at sentencing as to the amount of proceeds derived from the offense, and enter a forfeiture money judgment in that amount. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the

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forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees that the United States shall, at its option, be entitled to the forfeiture of any property (substitute assets) of the defendant up to the value of the money judgment. The Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

The defendant agrees to take all steps necessary to identify and locate all substitute assets and to transfer custody of such assets to the United States before the defendant's sentencing. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees that Federal Rule of Criminal Procedure 11 and USSG §1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of his cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to any substitute assets before the defendant's sentencing. In addition to providing full and complete information about substitute assets, these steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

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

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the defendant may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to,

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garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this obligation is satisfied, the Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$100.00, payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing.


The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.


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4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to

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the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be

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permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring

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defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

9. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in

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defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

FACTS

Smith Advertising and Associates, Inc., ("Smith Advertising") was a North Carolina corporation, whose office was located at 321 Arch Street, Fayetteville, North Carolina 28301. On July 20, 2004, Smith Advertising registered its Florida presence with the Florida Department of State's Division of Corporations. Sometime in or about 2007, Smith Advertising's Florida office was

established at 1626 Ringling Boulevard, Suite 510, Sarasota, Florida 34236. MARCIA CAULDER conspired with G.T.S., G.T.S., A.M., T.M., D.J., S.A. and others known and unknown to commit wire fraud and mail fraud, as described below.

Since at least as early as sometime in 2005, Smith Advertising had been experiencing financial difficulties. Ostensibly to raise the necessary capital to operate the business, Smith Advertising entered into a factoring arrangement with a company, CapitalPlus Equity, LLC ("CapitalPlus"), which maintained its business office in Knoxville, Tennessee. G.T.S. discovered that Smith Advertising could submit to CapitalPlus fake invoices (which were from Smith Advertising ostensibly to a client of Smith Advertising), which CapitalPlus would unknowingly rely upon to lend money to Smith Advertising under their factoring agreement. Smith Advertising began to submit false invoices to CapitalPlus. G.T.S. also opened a series of Post Office Boxes to serve as addresses for the clients to whom the false invoices were addressed. This worked for a while. However, sometime in or before March or April 2009, CapitalPlus notified Smith Advertising that it was going to begin sending statements directly to Smith Advertising's clients rather than relying upon Smith Advertising to notify the clients, which would necessarily reveal the fraud.

This led G.T.S. to begin to look for a substitute for CapitalPlus. He and the other G.T.S. reached out to others, including to L.S., who lived in Sarasota, Florida, and had a prior existing relationship with G.T.S. and Smith

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Advertising. On April 2, 2009, G.T.S. emailed L.S. proposed terms for a potential seven million dollar extension of credit to Smith Advertising. On May 5, 2009, G.T.S. and G.T.S. met with a group of principals organized by L.S., which was then known as the "Investment Group," to discuss replacing CapitalPlus as Smith's factor. These principals later formed Receivable Management Funding ("RMF") and they included M.S., W.S., and L.S. RMF was based in Sarasota and ultimately co-located with Smith Advertising's Florida presence.

As a result of mailing statements directly to clients, in March or April 2009, CapitalPlus uncovered the fraud. On May 13, 2009, CapitalPlus' COO, S.A., notified Smith Advertising that it was in default under the terms of the factoring agreement and declared all of Smith Advertising's obligations (\$4,542,302.66) immediately due and payable. However, S.A. agreed not to report Todd Smith and others to law enforcement if CapitalPlus was made whole. As part of the agreement, CapitalPlus required a written confession from Gary and Todd Smith. They agreed and provided the following statement: "[w]e decided the only way we could do so and to whether (sic) the storm was by robbing Peter to pay Paul in hopes the economy would correct itself ... we could only do so by making up false invoices.... Our intent was to fabricate only for short period of time until payments would pick back up and we pay you off (sic)." As part of the agreement not to report either G.T.S. to law enforcement, CapitalPlus also required that both G.T.S.s' salaries be capped at \$25,000 per month.

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In an email dated October 27, 2009, M.S., a manager of RMF, wrote to G.T.S., explaining to him that, before RMF would transfer any funds, the principals want to speak with CapitalPlus. The email made it clear that CapitalPlus' reason for terminating their business with Smith Advertising was material to RMF in moving forward with a factoring agreement with Smith Advertising. M.S. wrote that he wanted to "hear from the 'horse's mouth' that they are looking to reduce their line because of pressure from their funding sources." G.T.S. did not want CapitalPlus to reveal to RMF the fraud that had been uncovered. Ultimately, on October 29, 2009, M.S. emailed G.T.S. S.A.'s phone number. S.A. falsely told M.S. that Capital Plus was ending its relationship with Smith Advertising purely for business reasons (a capital concentration issue). S.A. elaborated that CapitalPlus was terminating its relationship with Smith Advertising because of a concentration issue and he indicated that Smith Advertising's business had become too large for CapitalPlus. S.A. intentionally omitted the truth, that is, CapitalPlus severed its relationship with RMF because it had uncovered the fraud. On December 23, 2009, S.A. sent an email to G.T.S.'s attorney in which he wrote "I want to get this deal done and over with but my partners aren't willing to accept the \$2.5 million. So we either work something out or your guys go to jail." On December 24, 2009, RMF wired the final buyout payment to CapitalPlus. CapitalPlus then filed a UCC Financing Statement Amendment that cancelled the original financing statement between CapitalPlus and Smith Advertising. RMF had replaced CapitalPlus as

Smith Advertising's factor, a relationship that continued until Smith Advertising imploded in March 2012.

Individuals joined RMF to raise the capital that was then lent to Smith Advertising. The conspirators created and had created false invoices from Smith Advertising to support the factoring arrangement with RMF. Because RMF allowed the clients to pay on the invoices directly to Smith Advertising, RMF did not detect the fraud. Instead, money was lent by RMF to Smith Advertising and money sent back to RMF directly from Smith Advertising, a pattern that continued until the scheme collapsed.

Individuals also lent money directly to Smith Advertising in the form of bridge loans. Bridge loans were supposed to fund Smith Advertising's advance purchase of advertising space. Because the purchase of advertising space was done in bulk and in advance, Smith Advertising was supposed to be able to purchase it at a discount. Smith Advertising could then sell the advertising space to its clients at a lesser discount and thereby benefit its clients while still profiting from pre-purchasing the advertising space. However, to purchase in advance advertising space, Smith Advertising needed to have capital available to make the purchases. Bridge loans were meant to provide the upfront capital needed to buy the advertising space, bridging the gap in time between time when the advance purchase of the advertising space was completed and the time when Smith Advertising's client paid Smith Advertising for the space. As with the invoice factoring, the bridge loans were supported by fake invoices from

Smith Advertising, usually created and supplied to the lenders or sometimes implied, depending on the amount of documentation sought by the individual lender for each loan. The fake invoices falsely and fraudulently showed that Smith Advertising owed money for having made an advance purchase of advertising space at a discount. The invoices were (1) all fake, (2) not true regarding what was purchased and for the amount it was purchased, and (3) unlawfully used the identities of people and entities to "bill" Smith Advertising without their permission.

In addition, all of the loans – invoice factoring and bridge loans – were premised on a fundamental lie, that is, the true purpose of the loans materially varied from that which was represented to the lenders. In truth and fact as the conspirators then and there well knew, the true purpose of the loans was actually to cover Smith Advertising's losses, to attempt to stay current on the ever-growing debt, and to benefit the conspirators (e.g., keeping themselves employed and paid).

With respect to the creation of the fraudulent documents, Smith Advertising had an instruction manual, entitled "Instructional Manual – Drksd.doc," which described how to create the fake invoices and promissory notes. The side of the business handling the fraud was known as the "Dark Side" of the business. The "Dark Side" manual provided the location on the computer system where fake invoices were to be stored, and instructed the fabricators to ensure that a copy of each invoice "created [was] also filed under the

corresponding lender folder under Vendor Invoices." The Manual listed vendors to choose from when fabricating invoices and provided information about the vendors, e.g., "Billboards," "Printing & Direct Mail," "Social Media," and "video production." Finally, the manual reminded the fabricator to change the invoice number by "4-15" if the invoice was to be for the same date as a prior invoice. The file's properties showed that the author of this file was employee T.M.

One example of the creation process was documented in emails between MARCIA CAULDER and G.T.S. on March 2, 2012. MARCIA CAULDER sent G.T.S. an email containing a fake invoice from Harperprints of Henderson, North Carolina, which listed six printing jobs, each of 500,500 items and each for \$1,000,000. G.T.S. replied to that email on the same day, indicating in his reply that the numbers were "too even" and that they should be "mixed up so they are not all \$1mm." A few minutes later, MARCIA CAULDER replied that she changed it.

The false invoices were, after creation, often sent directly to the lenders. First, conspirators manufactured the documents. For example, on February 7, 2012, A.M. sent an email and attachment to G.T.S. The attachment contained promissory notes totaling \$1,350,000 to be loaned by victim-lender J.C. in return for \$233,000 in fees, as well as vendor invoices. In the email, A.M. wrote that "all are printing except for one which was 100k for 10k so I made it a billboard job. Let me know if he will also be requiring client invoices with these." Then conspirators sent the documents to the victims. For example, on October

15, 2009, G.T.S. wrote to victim-lender W.S., "Hi, [W.], attached is an opportunity to replace the deal due tomorrow." Attached to the email was a promissory note stating W.S. would loan Smith Advertising \$50,000 on October 16, 2009, for a one-time fee of \$3,800. The loan would be paid in full by November 19, 2009. The second attachment to the email was a fraudulent invoice from Take One Productions to Smith Advertising for a \$107,600 video production job with a \$7,600 "pre-pay discount." The third attachment to the email was a fraudulent invoice for a video production job from Smith Advertising to the Moore County North Carolina Convention and Visitors Bureau ("CVB") in the amount of \$117,600.

The terms of the loans were generally set in the solicitations by conspirators to lenders. For example, on January 27, 2011, G.T.S., using the email address [T.S.]@smithadv.com, wrote to victim-lender C.S., "we have 48K for 5 days if you want it. The discount is 600 dollars for you. Please let me know if you would like to do. We can email you the paperwork and send you the repayment check and fee. Thanks. [T.]" Another example included T.M., emailing on February 8, 2012, victim-lender C.S., the following false "opportunity" to lend money to Smith Advertising: "The following opportunity is available for your review: Loan Amount: \$40,000.00, Duration: 30 days, Fee: \$4,800."

In addition, many of the loans were "renewed," that is, the principal of the loan was lent again to Smith Advertising for a subsequent loan after the preceding loan had concluded. An email exchange between victim-lender J.M.

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and T.M. and A.M. on March 5, 2012, provided insight into the mindset of the conspirators during this process. Victim-lender J.M. asks T.M. if a set of bridge loans he was involved in were going to be renewing again. T.M. responded that they were going to be. J.M. was surprised by this, commenting, "How are you finding renewals for those?? They are monster deals!!" T.M. forwarded the comments from the victim-lender J.M. to A.M. and added, "Please read below for a good laugh!" A.M. responded, "HAHAHAHAHAHAHA... Yeah they're monster deals alright."

In addition to wire communications crossing state lines (e.g., emails from Fayetteville, NC, to Sarasota, FL), mailings were sent in execution of the mail fraud aspect of the scheme. Recovered at Smith Advertising during the execution of the search warrant were FedEx and UPS shipment receipts that showed mailings from the Smith Advertising office in Fayetteville, NC, to victim-lender C.S.' residence in Sarasota, FL. Several of the receipts contained bridge loan numbers such as CS91010A, and CS91010B. Others did not contain specific references to bridge loan file numbers, but they did contain dates that coincide with dates found on the promissory notes. These receipts included FedEx shipment receipt with tracking number 796958991645, which documented a mailing through FedEx envelope using standard overnight service on April 6, 2011. The mailing was from Smith Advertising's office in Fayetteville, NC, to victim-lender C.S.' residence in Sarasota, FL.

Defendant's Initials *MC*

Some checks were even sent by private courier. On January 25, 2012, checks were actually flown to M.K. on a private flight (tail number N744SR), from Fayetteville Regional airport to the Sarasota airport (airport code SRQ) by Smith Advertising.

In addition to manufacturing false invoices and promissory notes, conspirators also fabricated other documents to perpetrate and mask the fraud. For example, on February 6, 2012, MARCIA CAULDER sent an email to M.S., a principal of the RMF group. MARCIA CAULDER wrote that "[T.]" had asked her to send the message to him. The email appeared to show messages sent between G.T.S. and D.G., Senior VP of Bridgeview Bank Group and a victim of identity theft, on January 26, 2012. In the initial message from G.T.S. to D.G., Smith asked why several checks were returned when Smith Advertising had the funds available in their account. D.G.'s fabricated reply stated in part, "It appears it was a clerical error... It was our fault. If you want to send them thru a second time they will be honored." This email conversation was also sent by G.T.S. to victim-lender C.S. on February 8, 2012.

The email communication between G.T.S. and D.G. actually took place on September 14, 2011, and was about a different topic. Emails found on the server showed that G.T.S. had sent the original, genuine conversation to MARCIA CAULDER on February 6, 2012; the text was edited by MARCIA CAULDER and returned to G.T.S. The contents of D.G.'s communication to G.T.S. were falsely, fraudulently, and substantially altered.


Defendant's Initials MC

Other examples of manufactured documents included a purchase order and a contract that were ostensibly from Cumberland County. On February 10, 2012, MARCIA CAULDER sent an email and attachment to G.T.S. The attachment was a Cumberland County (North Carolina) purchase order purporting to show an \$8,000,000 job with Smith Advertising for printing and direct mail services related to a flu vaccine campaign. The buyer for the county was listed as K.T.

The purchase order appears to be one for the City of Fayetteville, but with Cumberland County's information replacing the city's information. The signature on the bottom of the fraudulent purchase order is from G.W, who worked in the purchasing department for the City of Fayetteville and who was a victim of identity theft.

Also on February 10, 2012, the purchase order email was followed by a message from MARCIA CAULDER to G.T.S. with a contract attached documenting the (fake) \$8,000,000 production job between Smith Advertising and Cumberland County. The contract bears the same stolen signature of G.W. This contract was then emailed to victim-lender L.S., who was in Sarasota, FL, by G.T.S. on February 10, 2012.

A large number of people and entities were defrauded by the scheme. At least one hundred and twenty-nine individuals lent funds to Smith Advertising as bridge lenders or as members of RMF. Seventy-four of them have claimed that, collectively, their losses exceed \$55,000,000. Smith Advertising

Defendant's Initials 

maintained two sets of financial books, a false set and an accurate set.

According to the accurate set of books, on February 23, 2012, Smith Advertising's total assets were then valued at -\$66,723,391.55 and the total equity was -\$103,140,084.68.

In March of 2012, the scheme collapsed under the weight of its ever increasing debt burden. The cash crunch was particularly acute in a series of transactions between M.K. and Smith Advertising. M.K., a bridge lender, required his principal and interest be returned to him before he would lend the money again to Smith Advertising. The problem was that Smith Advertising could not repay M.K. as he requested. Smith Advertising's Bridgeview Bank account was significantly in the red. Starting in December 2010, the average balance in the Smith Advertising Bridgeview account (ending with the numbers 8201) fell below zero. Monthly deposits and withdrawals for 2011 averaged \$7.4 million and \$7.6 million respectively. The monthly ending balances in 2011 on the account averaged -\$316,000. As might be expected, Smith Advertising incurred significant overdraft fees for the negative balances, \$79,551 in overdraft fees to Bridgeview Bank in 2011 alone. Finally, on or about January 25, 2012, Bridgeview Bank began returning Smith Advertising's checks as "dishonored" and marked "refer to maker."

M.K. banked with Regions Financial Corporation, more commonly known as Regions Bank. Regions Bank was a publicly traded Delaware corporation, headquartered in Birmingham, Alabama. Regions Bank operated

Defendant's Initials *MC*

over 1,600 branches in sixteen states. The accounts of Regions Bank were insured by the Federal Deposit Insurance Corporation ("FDIC"). Regions Bank's FDIC Certificate number was 12368.

As Bridgeview Bank began "dishonoring" the Smith Advertising checks, Regions Bank began to question the Smith Advertising-related transactions. G.T.S. attempted to intervene to keep the money flowing. Regions Bank's Sarasota branch manager Linda Council received a phone call from G.T.S., who told her that, while the checks had not cleared the Smith Advertising account, there really was enough money in the account to cover the checks to M.K. G.T.S. offered to send a screen shot of Smith Advertising's account balances. On January 24, 2012, at 10:51 a.m., G.T.S. in Fayetteville, North Carolina, emailed L.C., in Sarasota, Florida, a screen shot of a webpage that read, "Welcome [T.S.]. Your last Bridgeview Business Internet Banking sign on was Tuesday, January 24, 2012 at 08:10 AM ET." The screen shot showed the balance for the account ending in 8201 to be \$12,489,358.59. What Regions Bank did not know is that the account balance was actually -\$12,489,358.59 and that the minus sign (showing it was negative \$12 million) had been fraudulently removed. The email was an electronic transmission of data that crossed state lines, terminating in Sarasota, Florida, which is in the Tampa Division of the Middle District of Florida. By January 26, 2012, Bridgeview Bank had "dishonored" over \$14,800,000 of Smith Advertising's checks that victim M.K. had deposited into his Regions Bank account. In the interim, M.K. had wired

large sums of money back to Smith Advertising's account at Bridgeview Bank. As a result of this email and other actions, FDIC-insured Regions Bank suffered a loss of approximately \$9,000,000.

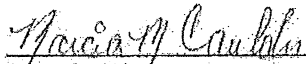
12. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

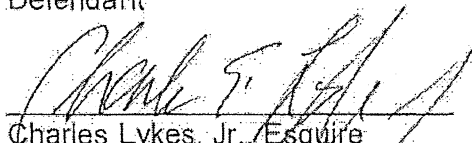
13. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 15th day of November, 2015.

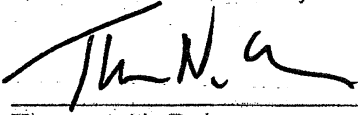


Marcia Caulder
Defendant

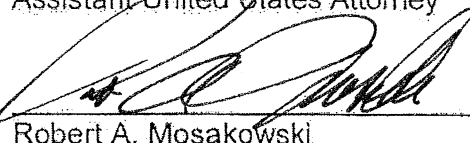


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