

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 19-cr-00082-MSK-GPG

UNITED STATES OF AMERICA

Plaintiff,

v.

1. CORY THOMPSON,

Defendant.

PLEA AGREEMENT

The United States of America (the government), by and through Jeremy Chaffin, Assistant United States Attorney for the District of Colorado, and the defendant Cory Thompson, personally and by counsel, Stanley Marks, submit the following Plea Agreement pursuant to 11(c)(1)(A), (B) of the Federal Rules of Criminal Procedure and District Court of Colorado Local Rule 11.1.

I. AGREEMENT

A. Defendant's Obligations

1. Counts of Conviction

The defendant agrees to plead guilty to Count 12 of the Indictment, charging a violation of 18 U.S.C. § 1343, wire fraud.

2. Appellate Waiver

The defendant is aware that 18 U.S.C. § 3742 affords the right to appeal the sentence, including the manner in which that sentence is determined. Understanding



this, and in exchange for the concessions made by the government in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence 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 18; 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. Forfeiture

The defendant admits to the forfeiture allegation contained within the Indictment. 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 Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), whether in the possession or control of the United States or in the possession

or control of the defendant or defendant's nominees, or elsewhere. The assets to be forfeited specifically include, but are not limited to, the following:

1. Real property located at 509 W. Applewood Dr., Fruita, Colorado 80521;¹
2. 2014 GMC 2500 Denali HD, VIN 1GT120C81EF133872;
3. 2001 Yamaha Gp800r, HULL YAMA2203A101;
4. 2001 Yamaha Gp800r, HULL YAMA1162B101;
5. 2013 Hyundai Sonata; VIN 5NPEB4AC1DH731609;
6. 2005 Caravelle 232 Interceptor, HULL VCN18140E505;
7. 2005 Tenn trailer, VIN 1TPSB262451053456;
8. 2016 GMC Sierra, VIN 1GT12UE82GF134388;
9. 2015 GMC Sierra, VIN 1GT120E8XFF666138; and
10. A money judgment in the amount of the proceeds obtained by the defendant's scheme, less any funds recovered from the forfeiture of direct assets.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have. The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis to establish that the requisite nexus exists between the specific property subject to forfeiture and the offense to which defendant is pleading guilty. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the Court find that the government has established the requisite nexus and enter a preliminary order of forfeiture.

¹ The defendant and the United States are engaging in settlement discussions regarding the United States' claim to this real property. If the parties enter into a settlement agreement resolving the United States' claim to this real property, the United States will not seek to forfeit the real property.

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

4. Restitution

The defendant agrees that his sentence will include an order of restitution which shall be determined at the time of sentencing. The defendant further agrees to comply with any restitution order entered at the time of sentencing and to cooperate in efforts to collect the restitution obligations, by any means the United States deems appropriate.

B. Government's Obligations

1. Dismissal of Charges and Sentencing

If the defendant enters an unconditional plea of guilty to Count 12 of the Indictment and otherwise fulfills all obligations as outlined in this plea agreement, the United States Attorney's Office for the District of Colorado will dismiss the remaining counts against the defendant in the Indictment at the time of sentencing.

The government further agrees to recommend a sentence within the guideline range as determined by the Court. This recommendation is not binding on the Court,

and the defendant agrees that he will not be permitted to withdraw his plea if the Court does not follow the government's recommendations. The defendant recognizes that his ultimate sentence will rest solely within the discretion of the sentencing Court.

2. Acceptance of Responsibility

Provided the defendant does not do anything that is inconsistent with accepting responsibility prior to sentencing, the government will recommend that the defendant receive full credit for acceptance of responsibility pursuant to United States Sentencing Guidelines § 3E1.1.

C. Effect of Withdrawal from Plea Agreement

The parties stipulate and agree that the government may unilaterally withdraw from this Plea Agreement under any of the following circumstances: 1) if the defendant does not plead guilty to Count 12 of the Indictment; 2) if the Court does not accept the defendant's guilty plea; 3) if the defendant successfully withdraws his plea, either in the district court or on direct or collateral appeal; 4) if the defendant, at any time after judgment is entered, obtains dismissal, reversal, or remand of the count(s) of conviction for any reason; or 5) if the court rejects this Plea Agreement (or any part thereof), either before, during, or after sentencing.

II. ELEMENTS OF THE OFFENSE

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

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

- Second:** The defendant acted with specific intent to defraud or obtain money or property by false or fraudulent pretenses, representations or promises;
- Third:** The defendant used, or caused another person to use, interstate or foreign wire communication facilities for the purpose of carrying out the scheme; and
- Fourth:** The scheme employed false or fraudulent pretenses, representations, or promises that were material.²

III. STATUTORY PENALTIES

The maximum statutory penalty for a violation of 18 U.S.C. § 1343 is: not more than twenty (20) years of imprisonment, not more than a \$250,000 fine, or both; not more than three (3) years supervised release; a \$100 special assessment fee; plus restitution.

If probation or supervised release is imposed, a violation of any condition of probation or supervised release may result in a separate prison sentence and additional supervision.

IV. COLLATERAL CONSEQUENCES

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

V. STIPULATION OF FACTS

The 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

² 10th Cir., Criminal Pattern Jury Instructions, No. 2.57 (2011).

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 that the defendant's relevant conduct began in December 2013. The parties agree as follows:

In December 2013, the defendant entered into a business partnership with K.B. to operate a company formed by the defendant called DACK Energy Services, LLC ("DACK"). The primary function of DACK was to provide roustabout services (i.e. maintenance, welding, miscellaneous repairs, and labor) for well sites owned by oil and gas companies in Colorado and surrounding states.

The defendant acted as operating partner. In this role, the defendant was solely responsible for managing work production, hiring employees, procuring necessary equipment, and establishing contracts with oil and gas companies. K.B., in turn, provided investment capital for the operations.

Between January 6, 2014, and January 15, 2016, the defendant submitted invoices to K.B., and others, which the defendant claimed represented work performed by DACK. These invoices were entered into DACK's business accounting system as

Accounts Receivables, reflecting future income for DACK. K.B. relied on these invoices and the Accounts Receivables information in making investment decisions regarding DACK.

While some of the invoices submitted by the defendant represented legitimate work performed by DACK, many of the invoices the defendant submitted were completely fabricated and did not represent any future income DACK would receive. Often, the defendant had not established any sort of business relationship at all with the companies identified in the fabricated invoices.

By submitting these fabricated invoices, the defendant was able to falsely represent the nature and extent of the work performed by DACK, giving the appearance that DACK was profitable and growing when in reality that was not the case. In total, over \$1,400,000 in fabricated invoices were entered into DACK's business accounting system as Accounts Receivables.

On April 22, 2015, the defendant sent an email to the DACK accountant utilizing interstate wire communication facilities. Attached to this email were fabricated invoices that the defendant claimed represented funds owed to DACK from an energy company. In reality, DACK had not performed any of the work identified in these fabricated invoices. Also attached to the email was an "invoice" substantiating a future project that the defendant had claimed to have secured. The defendant previously told K.B. that he had a project in Texas that would significantly expand DACK operations, but additional investment was required. In reality, no such project existed.

Based on the fraudulently inflated Accounts Receivables and the false project portrayed by the defendant, K.B. borrowed \$1,250,000 and invested that money into

DACK. K.B. would not have invested this money had he known that the invoices were fraudulent and the project did not exist.

Throughout DACK's existence, the defendant diverted funds from DACK for his own, and others', personal benefit. On July 14, 2014, the defendant represented to K.B. that he had hired two new employees. The defendant personally collected the paychecks for these employees and deposited the proceeds into his own accounts. The government asserts, but the defendant disputes, that these employees did not exist, and that the defendant used the payroll of these fictitious employees for his and his family's personal expenses.

The defendant also ensured that a number of family members and friends were on DACK's payroll. Several of these purported "employees" were paid a salary, but performed little, if any, actual work for DACK. Typically, the defendant had these "employees" perform personal services for himself and his immediate family.

The defendant also opened separate bank accounts in the name of DACK, without K.B.'s knowledge, for the purpose of controlling and concealing payments to DACK. The defendant deposited much of the limited legitimate work performed by DACK into these accounts. Rather than share these proceeds with DACK or K.B., the defendant used them for his own and his family's personal benefit.

Using the money the defendant obtained as part of his scheme, the defendant paid a portion of the mortgage for his home located at 509 W. Applewood Dr., Fruita, Colorado 80521, and purchased or made payment toward the vehicles identified in the forfeiture allegation of the Indictment.

The government asserts that the defendant's relevant conduct involves a loss of at least \$1,250,000. The defendant asserts that the loss is lower than this, and requests an evidentiary hearing to address the loss amount.

VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

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.

Government's Guideline Calculation

- A. The base guideline is § 2B1.1(a)(1), with base offense level of 7.
- B. The government asserts that the defendant should receive a fourteen-level increase because the loss is more than \$550,000. § 2B1.1(b)(1)(H).
- C. The adjusted offense level therefore would be 21.
- D. Provided the defendant does not do anything that is inconsistent with the acceptance of responsibility, the defendant may receive as much as a three-level reduction for timely acceptance of responsibility. § 3E1.1(a), (b).
- E. The resulting offense level therefore would be 18.

Defendant's Guideline Calculation

- F. The defendant agrees that the base guideline is § 2B1.1(a)(1), with base offense level of 7.
- G. The defendant disputes the government's loss amount, and asserts that the loss may be only \$150,000 or less, resulting in only an eight-level increase.
§ 2B1.1(b)(1)(E).
- H. The adjusted offense level therefore would be 15.
- I. The defendant agrees that, provided he does not do anything that is inconsistent with the acceptance of responsibility, he should receive a reduction. Given the defendant's calculation above, this reduction would be two levels. § 3E1.1(a). However, if the Court determines that the defendant's offense level is 16 or greater, the defendant should receive an additional one-level reduction.
§3E1.1(b).
- J. The defendant, therefore, calculates the total offense level as 13.

Advisory Guideline Ranges

- K. 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 I.
- L. The career offender/criminal livelihood/armed career criminal adjustments would not apply.
- M. The advisory guideline range resulting from these calculations is as high as 27-33 months (total offense level of 18) or as low as 12 to 18 months (total offense level of 13). 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 12 months (bottom of Category I, total offense level 13) to 71 months (top of Category VI, total offense level 18). The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction.

- N. Pursuant to guideline § 5E1.2, assuming the estimated offense level is 18, the fine range for this offense would be \$10,000 to \$100,000, plus applicable interest and penalties. The fine range would be lower if the Court determined the total offense level was less than 18.
- O. Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is at least one (1) year, but not more than three (3) years.
- P. The parties agree that the amount of restitution will be determined at sentencing.

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

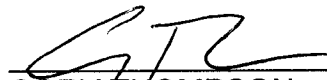
entirely from the advisory guidelines and to impose a non-guideline sentence based on other 18 U.S.C. § 3553 factors.

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.

VII. ENTIRE AGREEMENT

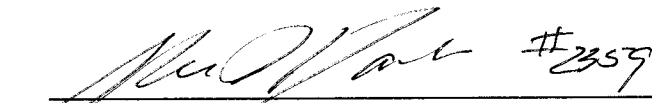
This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

Date: 1/20/2020



CORY THOMPSON
Defendant

Date: 1/20/2020



STAN MARKS
Attorney for Defendant

Date: 3/4/20



JEREMY CHAFFIN
Assistant United States Attorney