BENJAMIN B. WAGNER
United States Attorney
MARK J. MCKEON
MIA GIACOMAZZI
Assistant United States Attorneys
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 559-4000
Facsimile: (559) 559-4099

Attorneys for the
United States of America

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. TONY HUY HAVENS, Defendant.	CASE NO. 1:10-cr-00247-LJO
UNITED STATES OF AMERICA, Plaintiff, v. TONY HUY HAVENS, Defendant.	CASE NO. 1:11-cr-00250-LJO DATE: TO BE SET TIME: TO BE SET CTRM: HON. LAWRENCE J. O'NEILL

MEMORANDUM OF PLEA AGREEMENT PURSUANT TO RULE 11(c) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

Pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, the United States of America, by and through BENJAMIN

B. WAGNER, the United States Attorney for the Eastern District of California, and Assistant United States Attorneys MARK J. MCKEON and MIA GIACOMAZZI, and Defendant, TONY HUY HAVENS, and his attorney, ANN MCGLENON, have agreed as follows.

This document contains the complete Memorandum of Plea Agreement ("Plea Agreement") between the United States Attorney's Office for the Eastern District of California ("Government") and defendant TONY HUY HAVENS regarding these cases. This Plea Agreement is limited to the United States Attorney's Office for the Eastern District of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

1. Charges.

Case No. 1:10-cr-00247-LJO

The defendant acknowledges that he has been charged in Case No. 1:10-cr-00247-LJO in a 29 count indictment as follows:

Wire Fraud and Attempted Wire Fraud, in violation of Title 18, United States Code, Section 1343 (29 counts);

Forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

Case No. 1:11-cr-00250-LJO

The defendant acknowledges that he has been charged in Case No. 1:11-cr-00250-LJO in a four count indictment as follows:

Conspiracy to Commit Mail Fraud, in violation of Title 18, United States Code, Section 1349 (1 count);

Mail Fraud, in violation of Title 18, United States Code,

Section 1341 (3 counts);

Forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

2. Nature, Elements and Possible Defenses.

The defendant has read the charges against him contained in the indictments, and those charges have been fully explained to him by his attorney. Further, the defendant fully understands the nature and elements of the crimes in (i) Count Seventeen of the indictment in Case No. 1:10-cr-00247-LJO and (ii) Count Three of the indictment in Case No. 1:11-00250-LJO to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with his attorney.

COUNT SEVENTEEN (1:10-cr-00247-LJO):

The elements of the crime of wire fraud are:

First, the defendant knowingly participated in, devised, or intended to devise a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;

Second, the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property

Third, the defendant acted with the intent to defraud; that is, the intent to deceive or cheat; and

Fourth, the defendant used, or caused to be used, a communication by interstate wire to carry out an essential part of the scheme.

COUNT THREE (1:11-cr-00250-LJO):

The elements of the crime of mail fraud are:

First, the defendant knowingly participated in, devised, or intended to devise a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;

Second, the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property

Third, the defendant acted with the intent to defraud; that is, the intent to deceive or cheat; and

Fourth, the defendant used, or caused to be used, the mails to carry out or attempt to carry out an essential part of the scheme.

3. Agreements by the Defendant.

(a) Defendant agrees that this plea agreement shall be filed with the court and become a part of the record of the case.

(b) Defendant agrees to enter pleas of guilty to (i) Count Seventeen of the indictment in Case No. 1:10-cr-00247-LJO which charges him with Wire Fraud in violation of Title 18, United States Code, Section 1343; and (ii) Count Three of the indictment in Case No. 1:11-00250-LJO which charges him with mail fraud, in violation of Title 18, United States Code, Section 1341.

(c) Defendant understands and agrees that he will not be allowed to withdraw his plea should the Court fail to follow the

government's sentencing recommendations.

(d) Defendant knowingly and voluntarily waives his Constitutional and statutory rights to appeal his plea, conviction, restitution imposed, forfeiture order and sentence. This waiver of appeal includes, but is not limited to, an express waiver of defendant's right to appeal his plea, conviction, restitution imposed, forfeiture order and sentence on any ground, including any appeal right conferred by 18 U.S.C. § 3742, and defendant further agrees not to contest his plea, conviction, restitution imposed, forfeiture order and sentence in any post-conviction proceeding, including but not limited to a proceeding under 28 U.S.C. § 2255.

(e) Defendant further acknowledges that his plea of guilty is voluntary and that no force, threats, promises or representations have been made to anybody, nor agreement reached, other than those set forth expressly in this agreement, to induce the defendant to plead guilty.

(f) Defendant and the Government agree that for purposes of calculating defendant's Specific Offense Characteristics under the Sentencing Guidelines, (i) the loss for Count 17 in Case No. 1:10-cr-00247-LJO, including relevant conduct, was $248,750; (ii) the loss for Count 3 in Case No. 1:11-cr-00250-LJO, including relevant conduct, was $575,182; and (iii) except as stated above, the loss in Case No. 1:11-cr-00250-LJO did not include any other losses arising out of the "Gift Program."

(g) Defendant agrees that his base offense level for wire fraud and mail fraud is seven (7) pursuant to Section

2B1.1(a)(1)(B) of the United States Sentencing Commission Guidelines Manual; plus fourteen (14) levels for an intended loss more than $550,000 but less than $1,500,000 pursuant to § 2B1.1(b)(1)(H).

(h) Defendant agrees not to move for any downward adjustments in his offense level under either Chapters Two, Three, Four and/or Five of the United States Sentencing Guidelines. The defendant also agrees not to move for a downward variance of his sentence under the factors set forth in 18 U.S.C. § 3553. The defendant understands and agrees that this agreement by him includes, without limitation, not moving for a downward departure and/or variance of his offense level, criminal history category or criminal history points as defined by the Sentencing Guidelines. Additionally, the defendant agrees that the application of the U.S. Sentencing Guidelines to his case results in a reasonable sentence and that the defendant will not request that the court apply the sentencing factors under Section 3553 of Title 18, United States Code, to arrive at a sentence different than that called for under the Sentencing Guidelines. The defendant acknowledges that, if the defendant requests or suggests in any manner a different sentence than what is called for under the Sentencing Guidelines, the Government, at its sole discretion, may withdraw from this plea agreement and continue with its prosecution of the defendant as if the parties had not entered into this Plea Agreement.

(i) Defendant understands that the Court must consult the Federal Sentencing Guidelines (as promulgated by the Sentencing

Commission pursuant to the Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by United States v. Booker and United States v. Fanfan, 543 U.S. 220 (2005)), and must take them into account when determining a final sentence. Defendant understands that the Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the Sentencing Guidelines. Defendant further understands that the Court will consider whether there is a basis for departure from the guideline sentencing range (either above or below the guideline sentencing range) because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines. Defendant further understands that the Court, after consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

(j) Defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the investigation and prosecution of all charges in the above-captioned matter and of any related allegations (including without limitation any charges to be dismissed pursuant to this Agreement and any charges previously dismissed).

(k) Defendant agrees that his conduct is governed by the Mandatory Restitution Act pursuant to 18 U.S.C.

§ 3663A(c)(1)(A)(ii) and agrees to pay the full amount of restitution as ordered by the court to all victims affected by this offense, including but not limited to the victims covered in the factual basis, victims covered in those counts to be dismissed as part of the plea agreement pursuant to 18 U.S.C. § 3663A(a)(3).

(l) Defendant agrees to make a full and complete disclosure of defendant's assets and financial condition, and will complete the United States Attorney's Office's "Authorization to Release Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change of plea. The defendant also agrees to have the court to enter an order to that effect. The defendant understands that this plea agreement is voidable by the government if the defendant fails to complete and provide the described documentation to the United States Attorney's office within the allotted time.

(m) Defendant agrees to forfeit to the United States voluntarily and immediately all right, title, and interest to any and all assets seized pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(2), 28 U.S.C. § 2461, and Fed. R. Crim. P. 32.2(b)(1).

Those assets include, but are not limited to, the following:

1. Approximately $19,000.00 in U.S. Currency, held in abeyance by the U.S. Probation Office, Eastern District of California, and
2. A personal forfeiture money judgment in the amount of $804,932.00.

Further, the defendant agrees that the amount of $823,932.00, is a reasonable reflection of the amount that the defendant obtained directly or indirectly, as the result of the underlying criminal scheme and the violations of 18 U.S.C. §§ 1341 and 1343.

As part of the imposition of the personal forfeiture money judgment, the Defendant agrees to provide this Office with signed waivers related to federal and state income tax returns, and a waiver of the Right to Financial Privacy Act, which includes, but is not limited to, any credit records, communication records, DMV records, educational records, employment records, military records, business records, and credit reports maintained by any consumer credit reporting entity, until such time as the money judgment is satisfied. In this regard, the Defendant agrees to complete and sign a copy of IRS Form 8821 (relating to the voluntary disclosure of federal tax return information), whatever financial information disclosure form which may be required by an agency, as well as this Office's Right to Financial Privacy Act Waiver & Authorization to Release Information form.

Defendant agrees to fully assist the government in the forfeiture of any seized assets or assets later determined to be forfeitable and to take whatever steps are necessary to pass clear title to the United States. Defendant shall not sell, transfer, convey, or otherwise dispose of any assets found to be connected to the criminal events charged in the Indictment.

Defendant agrees not to file a claim to any of the seized

property in any criminal proceeding or civil proceeding, administrative or judicial, which is or may be initiated. Defendant agrees to waive right to notice of any forfeiture proceeding involving such property, and agrees to not file a claim or assist others in filing a claim in such a proceeding.

The defendant waives the notice provisions of Fed. R. Crim. P. 7(c) and 32.2(a), waives oral pronouncement of forfeiture at the time of sentencing and any defects in such pronouncement that pertain to forfeiture, and waives any defenses to forfeiture, including any defense predicated on the Ex Post Facto, Double Jeopardy, and Excessive Fines Clauses of the United States Constitution. The defendant knowingly and voluntarily waives any right to jury trial in any criminal or civil forfeiture proceeding.

(n) If the defendant's conviction on the count to which he is pleading is ever vacated at the defendant's request, or his sentence is ever reduced at his request, the government shall have the right to: (1) prosecute the defendant on any of the counts to which he pleaded guilty; (2) reinstate any counts that may be dismissed under this agreement; and (3) file any new charges that would otherwise be barred by this agreement. The decision to pursue any or all of these options is solely in the discretion of the United States Attorney's Office. By signing this agreement, the defendant agrees to waive any objections, motions, and defenses he might have to the government's decision, including Double Jeopardy. In particular, he agrees not to raise any objections based on the passage of time with

respect to such counts including, without limitation, any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment.

If it is determined that the defendant has violated any provision of this Agreement or if the defendant successfully moves to withdraw his plea: (1) all statements made by the defendant to the government or other designated law enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal, whether before or after his Agreement, shall be admissible in evidence in any criminal, civil, or administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no claim under the United States Constitution, any statute, the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by the defendant before or after this Agreement, or any leads derived therefrom, should be suppressed. By signing this Agreement, the defendant waives any and all rights in the foregoing respects.

(o) Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States, including being removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant affirms that he has been advised of the immigration consequences of pleading guilty and wants to plead guilty regardless of any immigration consequences that may result from his plea, even if such consequence includes his automatic deportation and removal from the United States

after completing any sentence of incarceration due to his plea.

4. Agreements by the Government.

(a) The government will recommend a two-level reduction (if the offense level is less than 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in Section 3E1.1 of the United States Sentencing Commission Guidelines Manual.

(b) The government agrees that the base offense level for wire fraud and mail fraud is seven (7) pursuant to Section 2B1.1(a)(1)(B) of the United States Sentencing Commission Guidelines Manual; plus fourteen (14) levels for an intended loss more than $550,000 but less than $1,500,000 pursuant to § 2B1.1(b)(1)(H)).

(c) The government agrees to recommend a sentence that is within the final applicable guideline range found by the district court.

(c) The defendant understands that if the defendant violates any of his conditions of pre-trial release the government may, in addition to the agreements set forth above and irrespective of its agreement in paragraph 4(c), request imprisonment for his violation of any pre-trial conditions.

(d) The government will recommend that the sentences in Case No. 1:10-00247-LJO and Case No. 1:11-cr-00250-LJO run concurrent to each other.

(e) The government agrees to dismiss the remaining counts in the indictments in Case No. 1:10-00247-LJO and Case No. 1:11-cr-00250-LJO at the time of sentencing.

5. Factual Basis.

Defendant will plead guilty because he is in fact guilty of the crimes set forth in Count Seventeen of the indictment in Case No. 1:10-cr-00247-LJO, and Count Three in Case No. 1:11-cr-00250-LJO. Defendant also agrees that the following are the facts of this case, although he acknowledges that, as to other facts, the parties may disagree:

COUNT SEVENTEEN (1:10-cr-00247-LJO):

> Beginning at a date unknown but no later than in or about January 2008 and continuing through on or about December 2008, in the County of Stanislaus, the State and Eastern District of California, and elsewhere, defendant HAVENS devised and intended to devise a scheme to defraud individuals through an "advance fee" fraudulent real estate scheme, and to obtain money through false and fraudulent pretenses, representations and promises.
>
> It was a part of the said scheme to defraud that:
>
> HAVENS would tell victim borrowers that he could assist them in obtaining a real estate loan from third-party lenders. The victim borrowers were generally seeking multi-million dollar loans for large construction projects. A majority of the victim-borrowers were desperate for financing to keep their projects from foreclosure. HAVENS preyed on the fact the borrowers were desperate for financing and executed a fraudulent scheme where he took money from borrowers and told them financing was going to be arranged with third-party lenders.
>
> HAVENS would provide the victim borrowers with fraudulent documents that showed a third-party lender was prepared to make a loan to the victim.

Based on HAVENS' instructions, the victim borrower would wire transfer money into a bank account at Bank of America, Modesto, California, in the name of HAVENS' mother Phuong T. Havens, but controlled by HAVENS, to pay in advance certain costs associated with the loan.

No lenders stood ready to make the loans solicited by HAVENS, and no loans were made to the victim borrowers. In some cases, the described lenders did not even exist. In other cases, the lenders existed, but had not actually committed to make the loans solicited by HAVENS.

HAVENS represented that he could arrange at least $1.1 billion in financing for at least fifteen victim borrowers, and collected at least $241,750 by wire transfers from the victim borrowers, as set forth below:

Victim	**Amount of Loan Solicited**	**Named Lender**	**Amount Wire Transferred to HAVENS**
MGW	$15,922,500	International Funding Corporation and Dynasty International	$10,000
AK	$23,400,000	International Funding Corporation	$7,750
CT	$50,000,000	Managed Mortgage Investment and Dynasty International	$17,500
RL	$37,400,000	Preferred Funding Corporation	$25,000

Victim	Amount of Loan Solicited	Named Lender	Amount Wire Transferred to HAVENS
JP	$87,000,000	Integrity Private Funding and Dynasty International	$35,000
TNL	$145,000,000	Dynasty International	$62,000
GW	$168,000,000	Dynasty International	$7,000
RH	$275,000,000	Dynasty International	$17,000
PK	$22,200,000	Dynasty International	$7,000
CH	$3,500,000	International Funding and Dynasty International	$12,500
JT	Unknown	Dynasty International	$7,000
JC	$250,000,000	Dynasty International	$14,000
RW and VD	Unknown	Dynasty International	$7,000

At all relevant times defendant TONY HUY HAVENS acted with the intent to defraud.

On or about November 7, 2008, in the County of Stanislaus, State and Eastern District of California, and elsewhere, defendant TONY HUY HAVENS for the purposes of executing the scheme described above, and attempting to do so, knowingly transmitted and caused to be transmitted by means of wire communications in interstate commerce a $10,000 wire transfer from Peoples First Community Bank, Panama City, FL to Bank of America, Modesto, CA to account of Phuong T. Havens with respect to victim TNL.

COUNT THREE (1:11-cr-0250-LJO):

Beginning no later than on or about March 31, 2006, and continuing through on or about October 1, 2006, in the Counties of Stanislaus and San Joaquin, the State and Eastern District of California, Tony Huy Havens devised and intended to devise a scheme and artifice to defraud, and to obtain and attempt to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, and in connection therewith caused the United States mail to be used.

In the summer of 2006, TONY HUY HAVENS arranged to purchase 1505 Rose Garden, Modesto, California (the "Property), a single family residence, for $880,000.

TONY HUY HAVENS arranged to have his in-laws, S.G. and R.G., be the "straw buyers" for the Property.

TONY HUY HAVENS negotiated a sales price of $780,000 with the seller of the Property, but then set a final sales price of $880,000 with the seller. In the transaction, the seller was to receive $780,000 from escrow, but was to send $93,000 to The Gift Program out of the proceeds of the sale, and to contribute $17,000 towards TONY HUY HAVENS's closing costs. In turn, The Gift Program was to send $88,500 to a bank account controlled by TONY HUY HAVENS.

TONY HUY HAVENS applied for and obtained two loans totaling $880,000 with New Century Mortgage under the names of S.G. and R.G. without the approval or knowledge of S.G. or R.G. The proceeds of the loans were intended for use as purchase money for the Property.

TONY HUY HAVENS did not reveal to New Century Mortgage that he was the true borrow and buyer of the Property.

On or about August 14, 2006, the escrow officer closed on the sale of the Property for the sales price of $880,000.

On or about August 21, 2006, the escrow officer wired $93,000 to The Gift Program.

On or about August 22, 2006, M.H., through The Gift Program, wired $88,350 to a bank account controlled by TONY HUY HAVENS.

At all relevant times, TONY HUY HAVENS acted with the intent to defraud.

On or about August 21, 2006, within the Eastern District of California, for the purpose of executing and attempting to execute the scheme and artifice set forth above, TONY HUY HAVENS mailed, and caused mail to be sent and delivered, by the United States Postal Service, a Deed of Trust from the Stanislaus County Recorder Modesto, CA to 2812 Mozart Dr., Modesto, CA 95358.

6. Potential Sentence.

The following is the maximum potential sentence which defendant faces as to each count:

(a) Imprisonment.

Maximum: Twenty (20) years.

(b) Fine.

Maximum: Two Hundred and Fifty Thousand dollars ($250,000.00)

(c) Both such fine and imprisonment.

(d) Restitution-

Mandatory

(e) Term of Supervised Release:

Maximum: Three (3) years.

(Should the defendant violate any of the terms of his supervised release, he can be returned to prison for the period of supervised release actually imposed by the Court or two (2) years, whichever is less.)

(f) Penalty Assessment.

Mandatory: One Hundred dollars ($100.00).

7. Waiver of Rights.

Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges against him, he would have the right to be represented by an attorney at all stages of the proceedings, and would have a right to a public and speedy trial. The trial could be either a jury trial or a trial by a judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial were a jury trial, the jury would be composed of twelve lay persons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising

peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent and that it could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt.

(c) If the trial were held before a judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not he was persuaded of the defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. At trial, the defendant would also have the right to assistance of legal counsel. If he could not afford legal counsel, one would be appointed for him by the court at no expense to him.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from this refusal to testify.

Defendant understands that by pleading guilty he is waiving all of the rights set forth above and defendant's attorney has explained those rights to him and the consequences of his waiver

of those rights.

8. Questions by Court.

Defendant understands that if the court questions him under oath, on the record and in the presence of counsel, about the offense to which he has pleaded guilty, his answers, if false, may later be used against him in a prosecution for perjury.

9. Entire Agreement.

This plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this plea agreement. There have been no representations or promises from anyone as to what sentence this Court will impose.

10. Court not a Party.

It is understood by the parties that the sentencing court is neither a party to nor bound by this agreement and the sentencing judge is free to impose the maximum penalties as set forth in paragraph 6. Further, in making its sentencing decision, the Court may take into consideration any and all facts and circumstances concerning the criminal activities of defendant, including activities which may not have been charged in the indictment.

11. Presentence Report.

Defendant understands that the United States Probation Office is not a party to this agreement and will conduct an independent investigation of defendant's activities and his background. It will then prepare a presentence report which it

will submit to the Court as its independent sentencing recommendation. In addition, the government will fully apprise the Probation Office, as well as the Court, of the full and true nature, scope and extent of the defendant's criminal activities, including information on his background and criminal history.

Dated: 9-18-15

BENJAMIN B. WAGNER
United States Attorney

By: _____
MARK J. MCKEON
Assistant U.S. Attorney

Dated: 09-18-15

_____
TONY HUY HAVENS
DEFENDANT

Dated: 9/18/15

_____
ANN MCGLENON
DEFENDANT'S ATTORNEY