

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

Criminal Case No. *15-cr-00001-WJM*

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN G. ELROD,

Defendant.

PLEA AGREEMENT

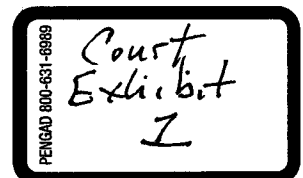
The United States of America (the Government), by and through Jennifer G. Ballantyne and Henry Van Dyck, Trial Attorneys, United States Department of Justice, Criminal Division, Fraud Section; and the Defendant, Brian G. Elrod, personally and by counsel, James B. Koch, Esq., submit the following Plea Agreement pursuant to D.C. COLO.LCrR 11.1.

I. AGREEMENT

The Plea Agreement is submitted pursuant to Fed. R. Crim. P. 11(c)(1)(A) and (B).

Defendant's Obligations:

- (1) The Defendant agrees to plead guilty to a single-count Criminal Information, charging conspiracy to commit wire and mail fraud, in violation of 18 U.S.C. § 1349.
- (2) The Defendant agrees that the total loss was more than \$2,500,000 but less than \$7,000,000 for



purposes of the Sentencing Guidelines Calculation set forth in Section III of this Plea Agreement.

- (3) The Defendant will execute a separate, written waiver of indictment in connection with this Agreement. The Defendant understands that he has a right (1) to be indicted by a grand jury; (2) to plead not guilty; (3) to have a trial by jury; (4) to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; (5) to confront and cross-examine witnesses and to call witnesses in his defense; and (6) against compelled self-incrimination. The Defendant hereby waives these rights.
- (4) The Defendant is aware that 18 U.S.C. § 3742 affords a Defendant the right to appeal the sentence imposed. 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 three criteria: (1) the sentence imposed is above the maximum penalty provided in the statute of conviction, (2) the Court, after determining the otherwise applicable sentencing guideline range, either departs or varies upwardly, or (3) the Court determines that the offense level is greater than 32 and imposes a sentence based upon that offense level determination. Except as provided above, the Defendant also knowingly and voluntarily waives the right to appeal the manner in which the sentence is determined on grounds set forth in 18 U.S.C. § 3742. The Defendant also knowingly and voluntarily waives his right to challenge this prosecution, conviction, or sentence and/or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255. This waiver provision, however, will not prevent the Defendant from seeking relief otherwise available if: (1) there is an explicitly retroactive change in the applicable

guidelines or sentencing statute, (2) there is a claim that the Defendant was denied the effective assistance of counsel, or (3) there is a claim of prosecutorial misconduct. Additionally, if the Government appeals the sentence imposed by the Court, the Defendant is released from this waiver provision.

(5) The Defendant agrees to provide truthful, complete, and accurate information, and agrees to cooperate fully with the Government. Deliberate falsehoods or misinformation provided during his cooperation with the Government would be grounds for rescission of this plea agreement as well as possible further prosecution for perjury or false statements. This ongoing, full, and truthful cooperation of the Defendant shall include, but not be limited to, the following:

- a. making himself available for interviews concerning his participation in and knowledge of all criminal activities, upon the request of attorneys and agents of the Government;
- b. furnishing all non-privileged documents and other material that may be relevant to the investigation and that are in the Defendant's custody, possession, or control, as requested by attorneys and agents of the Government;
- c. responding fully and truthfully to all inquiries of the Government in connection to the ongoing investigation, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503 et seq.);
- d. when called upon to do so by the Government, testifying in grand jury, trial, and other judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-02), and obstruction of

justice (18 U.S.C. § 1503 et seq.); and

- e. consenting to postponements of his sentencing, as requested by the Government and as approved by the Court. Should the Defendant be required to provide testimony at a time subsequent to his sentencing in this case and should the Defendant fail, at a later date, to comply with the obligation to testify, the Government could seek to recharge him on any and all counts which were not sought as part of this Plea Agreement.

- (6) The Defendant recognizes that any sentence requested by the Government will be a recommendation to the Court and that the Defendant's ultimate sentence will rest solely within the discretion of the sentencing Court.
- (7) The Defendant also acknowledges that he will not be able to withdraw his guilty plea in the event that the Court elects not to grant any downward departure pursuant to the request made by the Government or rejects the amount of departure requested by the Government.
- (8) The Defendant also agrees that he shall assist the Government in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, regardless of their nature or form, in all assets, including real and personal property, cash, and other monetary instruments, wherever located, which the Defendant or others to his knowledge have accumulated as a result of the illegal activities. Such assistance will involve an agreement on the Defendant's part to the entry of an order enjoining the transfer or encumbrance of assets which may be subject to forfeiture. Additionally, the Defendant agrees to identify as being subject to forfeiture all such assets, and to assist in the transfer of such property to the United States by delivery to the Government upon request, all necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds, and any and all other documents necessary to deliver good and marketable title to

said property.

(9) The Defendant also knowingly and voluntarily agrees to waive any claim or defense he may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to forfeited assets. Finally, the Defendant agrees to waive any applicable time limits for the initiation of administrative forfeiture and/or further notification of any judicial or administrative forfeiture proceedings brought against said assets, and the Defendant agrees to waive any appeal for the forfeiture.

(10) The Defendant agrees that should the Government determine in good faith, that the Defendant has violated any provision of this Plea Agreement, the Government will notify the Defendant or his counsel in writing and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the Defendant shall be subject to prosecution for any federal crime of which the Government has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The Defendant agrees that, in the event that the Government is released from its obligations under this Plea Agreement and brings criminal charges against the Defendant for any reason, the statute of limitations period for such offenses will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the Government gave notice of its intent to void its obligations under this Plea Agreement.

(11) The Defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement, any statements, documents, information, testimony, or evidence provided by him, directly or by his agents, to attorneys or agents of the United States, federal grand juries, or courts, and any leads

derived therefrom, may be used against him in any such further prosecution. The Defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Federal Rule of Evidence 410.

Government's Obligations:

- (1) The Government agrees not to pursue any additional charges against the Defendant based on conduct known to date. The nonprosecution terms of this paragraph do not apply to civil or administrative matters of any kind, to any violation of the tax or securities laws, or to any crime of violence. The Defendant understands that this Plea Agreement is binding only upon the Department of Justice, Criminal Division and does not bind any other federal, state, or local entity, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take.
- (2) If the Government determines that the Defendant has provided substantial assistance in any investigation or prosecution, and has otherwise fully complied with all of the terms of this Plea Agreement, it will make a motion, pursuant to U.S.S.G. § 5K1.1, advising the sentencing judge of all the relevant facts pertaining to that determination and requesting the Court to sentence the Defendant in light of the factors set forth in U.S.S.G. § 5K1.1(a)(1)-(5). The Defendant acknowledges that the decision with respect to whether he has provided substantial assistance in any investigation or prosecution, and has otherwise fully complied with all of the terms of this Plea Agreement is within the sole discretion of the Government. The Defendant further agrees that he will not contest or dispute the decision of the Government whether to file a motion for departure or the departure level recommended by the Government, if the Government makes a motion pursuant to U.S.S.G. § 5K1.1. It is understood that should the Government determine that the Defendant has not provided substantial assistance in any

investigations or prosecutions, or should the Government determine that the Defendant has violated any provision of this Plea Agreement, such a determination will release the Government from any obligation to file a motion pursuant to U.S.S.G. § 5K1.1, but will not entitle the Defendant to withdraw his guilty plea. The Defendant further understands that whether the Government files a motion pursuant to U.S.S.G. § 5K1.1, the sentence to be imposed on him remains within the sole discretion of the Court.

- (3) Subject to the ongoing, full, and truthful cooperation of the Defendant in Paragraph 3 of "Defendant's Obligations" of this Plea Agreement, and before sentencing in this case, the Government will fully advise the Court and the Probation Office of the fact, manner, and extent of the Defendant's cooperation and his commitment to prospective cooperation with investigations and prosecutions by the Government, all material facts relating to the Defendant's involvement in the charged offense, and all other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information, the Government may request, and the Defendant will not oppose, that sentencing be postponed until his cooperation is fully or substantially completed.

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: two or more persons agreed to violate the law.

Second: the Defendant knew the essential objectives of the conspiracy.

Third: the Defendant knowingly and voluntarily participated in the conspiracy.

Fourth: the alleged conspirators were interdependent; that is, the members, in some way or manner, intended to act together for their shared mutual benefit within the scope of the

conspiracy charged.

United States v. Fishman, 645 F.3d 1175, 1186 (10th Cir. 2011) (quoting *United States v. Baldridge*, 559 F.3d 1126, 1136 (10th Cir.), *cert. denied*, -- U.S. --, 129 S. Ct. 2170, 173 L.Ed.2d 1165 (2009)) (stating the elements of a wire fraud conspiracy); § 2.19, *Tenth Cir. Pattern Jury Instruction* (2011) (regarding interdependence).

III. STATUTORY PENALTIES

The Defendant understands that the statutory maximum penalties which may be imposed against him upon conviction for a violation of Title 18, United States Code, Section 1349 is:

- (a) a term of imprisonment of twenty (20) years;
- (b) a fine in the amount of \$250,000 or twice the gross pecuniary gain or loss incurred as a result of the offense;
- (c) a term of supervised release of not more than three years following any term of imprisonment. If the Defendant violates any condition of supervised release, the Defendant could be required to serve the entire term of supervised release in prison. 18 U.S.C. §§ 3559(a)(3); 3583(b)(2) and (e)(3); U.S.S.G. § 5D1.2(a)(2).

In addition, the Defendant understands that:

- (a) pursuant to 18 U.S.C. § 3663(a)(3), the Court shall order him to pay restitution to the victims of the offense; and
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the Defendant to pay a \$100 special assessment upon conviction.

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 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 date on which relevant conduct began is at least in or about November 2005. The parties further agree as follows:

- (a) In or about 2000, the Defendant, Brian G. Elrod, formed Compass Financial Solutions, LTD ("CFS"). CFS's principal offices were located in Denver, Colorado. From in or about 2000 through in or about January 2011, the Defendant operated CFS as a financial services marketing company. CFS had a sales and marketing staff which sold various financial products to investors located throughout the United States, including to investors located in Denver, Colorado.
- (b) From at least in or about November 2005 through at least in or about March 2011, the Defendant and his co-conspirators marketed and sold promissory notes that were purportedly

guaranteed by CFS. In addition, the Defendant and CFS sold millions of dollars in notes on behalf of other individuals and entities, for which the Defendant and CFS's sales staff received sales commissions.

- (c) With respect to the promissory notes that were purportedly guaranteed by CFS, the Defendant and his co-conspirators promised investors high returns through monthly interest payments, and represented to investors that the proceeds from the notes would be used for the operating expenses and expansion of CFS. However, the Defendant and his co-conspirators instead used the investors' funds primarily for: (1) interest and principal payments on promissory notes taken out by earlier investors; (2) salary, bonuses, and personal expenses for the Defendant and the Defendant's family; and (3) payments to the Defendant's co-conspirators.
- (d) At no time during CFS's operations did either CFS or the Defendant make enough money to make timely interest and principal payments to CFS's investors. As a result, in or about August 2010, CFS and the Defendant began defaulting on the promissory notes that were purportedly guaranteed by CFS.
- (e) Because CFS was financially insolvent, the Defendant, co-conspirator K.B., and others, agreed together to have K.B. assume CFS's obligations to investors under the notes. To induce CFS's investors to agree that (1) K.B. could assume CFS's obligations under the notes and (2) K.B. could delay making interest and principal payments to the investors, the Defendant, K.B. and their co-conspirators provided investors with fraudulent documents which falsely claimed that K.B. had 500 million Euros in his company's overseas bank account.
- (f) On or about September 14, 2010, co-conspirator K.B. mailed two fraudulent documents from Corona, California, to the Defendant in Buffalo Creek, Colorado which falsely stated that K.B. possessed 500 million Euros in his company's overseas bank account.

- (g) Later in or about 2010, the Defendant, co-conspirator K.B., and their co-conspirators, marketed and sold additional promissory notes to investors which were purportedly guaranteed by K.B. To induce investors to purchase the notes guaranteed by K.B., the Defendant, K.B., and other co-conspirators again falsely represented to investors, by showing them fraudulent documents, that K.B. possessed millions of Euros in his company's overseas bank account.
- (h) The Defendant, co-conspirator K.B., and other co-conspirators also falsely told investors that the proceeds raised from the notes purportedly guaranteed by K.B. would be used to "release" the millions of Euros purportedly held by K.B.
- (i) To disguise from investors the fact that the proceeds from the notes were not in fact going to be used to "release" the millions of Euros supposedly held by co-conspirator K.B. in overseas accounts, the Defendant, K.B., and their co-conspirators agreed to have investors wire their funds to co-conspirator B.D.'s attorney trust account. For example, on or about August 16, 2010, in Chafield, Colorado, the Defendant caused victim-investor C.G. to wire approximately \$100,000 from C.G.'s account at U.S. Bank, to co-conspirator B.D.'s attorney trust account. The next day, on or about August 17, 2010, the Defendant caused the same \$100,000 of funds to be wired to an account controlled by the Defendant.
- (j) The parties agree that, as a result of the Defendant's conduct, the Defendant and his co-conspirators caused over \$2,500,000 in losses to investors.

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.

- (a) The November 1, 2013 Guidelines apply;
- (b) Pursuant to U.S.S.G. § 2B1.1, the Defendant's base offense level is 7;
- (c) Pursuant to U.S.S.G. § 2B1.1(b)(1)(I), the loss is more than \$2,500,000 but less than \$7,000,000, resulting in a 18 level enhancement;
- (d) Pursuant to U.S.S.G. § 2B1.1(b)(2)(A)(i), the offense involved more than 10 victims, resulting in a 2 level enhancement;
- (e) Pursuant to U.S.S.G. § 2B1.1(b)(10)(C), the offense involved sophisticated means, resulting in a 2 level enhancement;
- (f) Pursuant to U.S.S.G. § 3B1.3, the Defendant abused a position of trust, resulting in a 2 level adjustment.
- (g) Therefore, the adjusted offense level would be 31.
- (h) The United States does not oppose a two-level reduction in the Defendant's adjusted offense level, based on the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the Court determines the Defendant's offense level to be 16 or greater prior to the operation of U.S.S.G. § 3E1.1(a), the United States agrees to make a motion under U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the Defendant's timely notification of his

intention to plead guilty. The United States may oppose any adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, the Department of Justice, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. Assuming the Defendant receives the three level adjustment contemplated in this subparagraph, his resulting offense level will be 28.

- (i) 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 (zero points) based on no known criminal history.
- (j) The advisory guideline range resulting from these calculations is 78 to 97 months. 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 78 months (bottom of Category I) to 175 months (top of Category VI). The guideline range would not exceed, in any case, the cumulative statutory maximums

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applicable to the counts of conviction. (The projected guideline range does not account for any reduction in sentence that might occur based on a § 5K1.1 Motion for substantial assistance filed by the Government. The Court ultimately will decide whether to grant such a Motion.).

- (k) *Fine.* Pursuant to U.S.S.G. § 5E1.2, assuming the estimated offense level above, the fine range for this offense would be \$12,500 to \$125,000, plus applicable interest and penalties.
- (l) *Supervised Release.* Pursuant to U.S.S.G. § 5D1.2, if the Court imposes a term of supervised release, that term would be at least 1 years, but not more than 3 years.
- (m) *Restitution.* Pursuant to U.S.S.G. § 5E1.1(a)(1), the Court shall enter a restitution order for the full amount of the victims' losses.

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.

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

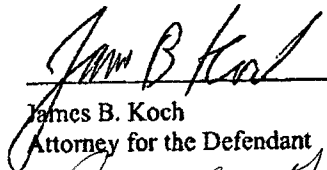
This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the Government nor the Defendant has relied, or is relying, on any terms, promises,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

Date:

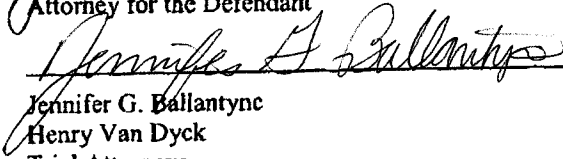
12/17/14

 Brian G. Elrod
 Defendant

Date:

12-18-14

 James B. Koch
 Attorney for the Defendant

Date:

1/5/15

 Jennifer G. Ballantyne
 Henry Van Dyck
 Trial Attorneys
 Department of Justice