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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,
12 vs.
13 Kevin Jon Cummings,
14 Defendant.
15

CR 17-00518-TUC-RM (JR)

PLEA AGREEMENT
(Class A Misdemeanor)

16
17 The United States of America and the defendant agree to the following disposition
18 of this matter:

19 PLEA

- 20 1. The defendant agrees to plead guilty to an Information, which charges the defendant
21 with a Class A misdemeanor violation of 42 U.S.C. § 1307(a), False Statements Related
22 to Social Security. The government will dismiss the felony indictment at sentencing.

23 ELEMENTS OF THE CRIME

- 24 2. The elements of False Statements Related to Social Security, 42 U.S.C. § 1307(a), are
25 as follows:
26 a. The defendant, knowingly and with the intent to defraud any person, made or
27 caused to be made any false representation concerning the requirements of
28

Chapter 7 of Title 42 of the United States Code, (The Public Health and Welfare - Social Security), or of any rules or regulations issued thereunder;

- b. The false representations were material; and
- c. The defendant knew such representations to be false.

MAXIMUM PENALTIES

3. The defendant understands that the maximum penalties for the offense to which he is pleading, False Statements Related to Social Security, 42 U.S.C. § 1307(a), are a maximum fine as described in the below paragraph, a maximum term of one (1) year imprisonment, or both, and a maximum term of one (1) year supervised release. 18 U.S.C. §§ 3571(b)(1), (d), (e), 3581(b)(6), and 3583(b)(3). It is a Class A misdemeanor. 18 U.S.C. § 3559(a)(6).
4. Pursuant to the Sentencing Guidelines, the court shall order the defendant to pay a fine, which may include the costs of probation, supervised release or incarceration, unless, pursuant to 18 U.S.C. § 3611 and §5E1.2(f) of the Guidelines, the defendant establishes the applicability of the exceptions found therein. The fine is the greater of \$1,000 or twice the gross pecuniary gain or loss from the offense. 42 U.S.C. § 1307(a); 18 U.S.C. §§ 3571(b), (d), (e). The defendant agrees 42 U.S.C. § 1307(a) is not exempt from the Alternative Fines Act. 18 U.S.C. § 3571(e). The defendant agrees that pursuant to the Alternative Fines Act, the maximum fine is twice the gross pecuniary loss or gain from the offense. 18 U.S.C. §§ 3571(b)(2), (d). The defendant agrees, given that the gross pecuniary loss to the Social Security Administration from his criminal conduct was \$305,371.20, the maximum fine is \$610,742.40. 18 U.S.C. §§ 3571(b)(2), (d). As part of this agreement, the defendant agrees to pay a fine of \$200,000. The defendant agrees he has the ability to pay a fine and any exceptions pursuant to 18 U.S.C. §§ 3611, 3572 and U.S.S.G. 5E1.2(e) do not apply to him.
5. Pursuant to 18 U.S.C. § 3013(a)(1)(A)(iii), the defendant must pay a special assessment of \$25.00 per Class A misdemeanor count. The special assessment is due and payable at the time the defendant enters the plea of guilty, but in no event shall be paid later

1 than the time of sentencing unless the defendant is indigent. If the defendant is indigent,
2 the special assessment will be collected according to the provisions of Chapters 227
3 and 229 of Title 18, United States Code.

- 4 6. In addition, restitution is mandatory pursuant to 18 U.S.C. § 3663A(c)(2) because an
5 offense listed under 18 U.S.C. § 3663A(c)(1) gave rise to the plea agreement, to wit 18
6 U.S.C. § 641. Pursuant to 18 U.S.C. § 3663A(c)(2), the defendant agrees he shall be
7 subject to an order of restitution to the Social Security Administration, requiring the
8 defendant to repay the agency \$305,371.20.

9 Immigration Consequences

- 10 7. The defendant recognizes that pleading guilty may have consequences with respect to
11 his immigration status if he is not a citizen of the United States. Under federal law, a
12 broad range of crimes are removable offenses. The offense(s) to which the defendant is
13 pleading guilty may be removable offenses. Removal and other immigration
14 consequences are the subject of a separate proceeding, however, and the defendant
15 understands that no one, including his attorney or the district court, can predict to a
16 certainty the effect of his conviction on his immigration status. The defendant
17 nevertheless affirms that he wants to plead guilty regardless of any immigration
18 consequences that this plea may entail, even if the consequence is his automatic
19 removal from the United States.

20 STIPULATIONS, TERMS AND AGREEMENTS

21 Agreements Regarding Sentencing

- 22 8. Pursuant to Fed. R. Crim. P., Rule 11(c)(1)(C), the government and the defendant
23 stipulate and agree to a six-month term of incarceration with a one-year term of
24 supervised release. The defendant has the ability to apply for early termination of
25 his supervised release if he has paid in full his restitution and fine. If the defendant
26 satisfies all his monetary penalties and is otherwise in compliance with his
27

- 1 conditions of supervised release, the government will not oppose a motion for early
2 termination of supervised release.
- 3 9. The parties agree that neither side will move to withdraw from the plea agreement
4 if the sentence imposed is the stipulated six months of incarceration.
- 5 10. If the court accepts the plea agreement and sentences the defendant consistent
6 with the agreement, the government will move to dismiss the remaining charges
7 against the defendant in the indictment, including the forfeiture allegation.
- 8 11. The defendant further agrees to pay mandatory restitution to the Social Security
9 Administration (SSA) totaling \$305,371.20 for the losses caused by his criminal
10 offense in this case. The defendant also agrees to pay a fine of \$200,000. The
11 defendant agrees he will pay \$200,000 toward his restitution prior to the date of
12 his sentencing hearing. The defendant agrees he will pay the remaining balance of
13 restitution owed and the \$200,000 fine no later than the date his supervised release
14 expires and/or is terminated.
- 15 12. The defendant and his co-defendant wife, Elaine Cummings, will be provided
16 financial affidavits by the United States Attorney's Office (USAO). As part of this
17 agreement, the defendant and the co-defendant will provide the USAO with their
18 truthful and complete financial affidavits within 30 days of the defendant's guilty
19 plea.
- 20 13. If the court accepts the defendant's guilty plea and sentences him within the
21 agreed upon sentencing range, the government will move to dismiss the pending
22 charges against the co-defendant wife, Elaine Marie Cummings, at the defendant's
23 sentencing hearing.
- 24 14. This agreement is contingent on the defendant qualifying as a criminal history category
25 I. If the defendant is more than a criminal history category I, the government may move
26 to withdraw from this plea agreement. This agreement is also expressly conditioned
27 upon the accuracy of the defendant's criminal history as known by the government at
28 the time of the plea. The discovery of any criminal history prior to sentencing, which

1 was unknown to the government at the time of the plea, will entitle the government to
2 withdraw from this agreement.

3 15. The parties are not waiving the pre-sentence report and request that the court order one
4 be prepared for sentencing.

5 16. The defendant understands that if the defendant violates any conditions of the
6 defendant's probation and/or supervised release, the probation and/or supervised
7 release may be revoked. Upon such revocation, notwithstanding any other provision of
8 this agreement, the defendant may be required to serve a term of imprisonment or the
9 defendant's sentence may otherwise be altered.

10 17. This agreement does not in any manner restrict the actions of the government in any
11 other district or bind any other United States Attorney's Office.

12 18. The defendant understands that the court is neither a party to nor bound by this
13 agreement and the court has complete discretion to impose the maximum sentence
14 possible for the crime to which the defendant has pled. However, if the court imposes
15 a sentence greater than the maximum term agreed upon by the parties or otherwise
16 rejects the plea agreement, the defendant may withdraw his guilty plea as authorized by
17 Rule 11, Fed. R. Crim. P. The defendant understands that he may not withdraw from
18 this plea agreement if the court accepts the agreement and sentences him to the
19 stipulated term of six months' incarceration consistent with the terms of this plea
20 agreement.

21 Restitution and Fine

22 19. Pursuant to 18 U.S.C. § 3663A, the defendant specifically agrees to pay restitution of
23 \$305,371.20 to the SSA. Pursuant to 18 U.S.C. §§ 3571(b)(2), (d), the defendant agrees
24 to pay a fine of \$200,000. The defendant agrees he will pay \$200,000 toward his
25 restitution prior to the date of his sentencing hearing. The defendant agrees he will pay
26 the remaining balance of restitution owed and the \$200,000 fine no later than the date
27 his probation and/or supervised release expires and/or is terminated. The defendant
28 further agrees that one of his conditions of supervised release and/or probation will be

1 that he pay the entire amount of restitution and fine on or before his term of supervised
2 release and/or probation expires and/or is terminated. The defendant understands that
3 the willful failure to pay the restitution and/or fine will be a violation of his supervised
4 release and/or probation, which could subject the defendant to a term of prison.

5 20. The Court can resentence the defendant if he knowingly fails to pay a misdemeanor
6 fine or restitution to any sentence which might have originally been imposed. 18 U.S.C.
7 § 3614. In this case, the parties agree that includes up to one year in prison.

8 21. The defendant agrees that he is waving his right to appeal any order of the district court
9 relating to the restitution and fine.

10 22. The defendant further agrees that, pursuant to 18 U.S.C. § 3613, all monetary penalties,
11 including the restitution and fine imposed by the Court, will be due immediately and
12 subject to immediate enforcement by the United States, as provided for in Section 3613.
13 The government agrees that provided the defendant pays \$200,000 toward his
14 restitution prior to the date of his sentencing hearing, and pays the remaining balance
15 of restitution owed and the \$200,000 fine no later than six months prior to the expiration
16 of his supervised release, the government will not initiate any enforcement proceedings
17 related to the remaining debt owed while the defendant is serving a term of supervised
18 release. The defendant agrees he will not sell, hide, waste, spend, destroy, transfer or
19 otherwise devalue any assets or property while he owes any remaining monetary
20 penalties in this case without the permission of the U.S. Attorney's Office. The
21 government may initiate financial investigation at any point.

22 23. All monetary penalties shall be submitted to the Treasury Offset Program so that any
23 federal payment or transfer of returned property the defendant receives may be offset
24 and applied to federal debts (which offset will not affect any periodic payment
25 schedule). If the defendant is incarcerated, the defendant agrees to participate in the
26 Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the
27 Court specifically directs participation or imposes a schedule of payments. The
28 defendant understands that any schedules of payments imposed by the court, including

1 schedules imposed while the defendant is incarcerated, on supervised release, or on
2 probation, are merely minimum schedules of payments and not the only method, nor a
3 limitation on the methods, available to the government to enforce the judgment. The
4 government agrees that there will be no post-judgment interest on the amount of
5 restitution set by the court.

6 Assets and Financial Responsibility

7 24. The defendant shall (i) make a full accounting of all assets, including real and personal
8 property in which the defendant has/had any legal or equitable interest in the last five
9 years; (ii) permit the U.S. Attorney's Office to immediately obtain the defendant's
10 credit reports in order to evaluate the defendant's ability to satisfy any financial
11 obligation that is or might be imposed by the court; (iii) make full disclosure of all
12 current and projected assets to the U.S. Probation Office immediately and prior to the
13 expiration and/or termination of the defendant's supervised release or probation, such
14 disclosures to be shared with the U.S. Attorney's Office, including the Financial
15 Litigation Unit, for any purpose [as well as the financial condition of all household
16 members (including but not limited to that of a spouse or child)]; (iv) cooperate fully
17 with the government and the probation officer to execute such documentation as may
18 be necessary to secure assets to be applied to the restitution and fine owed by the
19 defendant. The defendant agrees to permit the probation officer to provide to the U.S.
20 Attorney's Office copies of any and all financial information provided by the defendant
21 to the U.S. Probation Office; (v) not (and shall not aid and abet any other party to) sell,
22 hide, waste, spend, destroy, transfer or otherwise devalue any such assets or property
23 before sentencing, without the prior approval of the United States (provided, however,
24 that no prior approval will be required for routine, day-to-day expenditures); and (vi)
25 submit to an interview in which the defendant will fully and truthfully answer all
26 questions regarding the defendant's past and present financial condition. The defendant
27 agrees that any failure to comply with the provisions in this paragraph that occurs prior
28 to sentencing will constitute a violation of this plea agreement.

1 25.If the Court, after reviewing this plea agreement, concludes any provision is
2 inappropriate, it may reject the plea agreement pursuant to Rule 11(c)(5), Fed. R. Crim.
3 P., giving the defendant, in accordance with Rule 11(d)(2)(A), Fed. R. Crim. P., an
4 opportunity to withdraw the defendant's guilty plea.

5 Forfeiture, Civil, and Administrative Proceedings

6 26.Nothing in this agreement shall be construed to protect the defendant from civil
7 forfeiture proceedings or prohibit the United States from proceeding with and/or
8 initiating an action for civil forfeiture. Further, this agreement does not preclude the
9 United States from instituting any civil proceedings as may be appropriate now or in
10 the future.

11 Breach of the Agreement

12 27.If the defendant fails to comply with any obligation or promise pursuant to this
13 agreement, or if the defendant commits any new criminal offense while this case is
14 pending, including the failure to appear at sentencing, the United States:

- 15 a. may, in its sole discretion, declare any provision of this agreement null and void
16 and the defendant understands that he shall not be permitted to withdraw the plea
17 of guilty made in connection with this agreement;
18 b. may prosecute the defendant for any offense known to the United States for
19 which the defendant is responsible, and the defendant waives any statute of
20 limitations, Speedy Trial Act, and constitutional restrictions for bringing charges
21 after the execution of this agreement; and/or
22 c. may argue and the defendant may receive up to the maximum statutory sentence
23 for the offense to which the defendant has pled guilty.

24 Waiver of Defenses and Appeal Rights

25 28. The defendant waives (1) any and all motions, defenses, probable cause determinations,
26 and objections that the defendant could assert to the indictment or information; and (2)
27 any right to file an appeal, any collateral attack, and any other writ or motion that
28 challenges the conviction, an order of restitution or forfeiture, the entry of judgment

1 against the defendant, or any aspect of the defendant's sentencing-including the manner
2 in which the sentence is determined, and any sentencing guideline determinations. The
3 sentence is consistent with this plea agreement provided the defendant receives a
4 sentence of six months' incarceration, a restitution judgment of \$305,371.20, and a fine
5 of \$200,000.

6 29. The defendant further waives: (1) any right to appeal the Court's entry of judgment
7 against defendant; (2) any right to appeal the imposition of sentence upon defendant
8 under 18 U.S.C. § 3742 (sentence appeals); (3) any right to appeal the district court's
9 refusal to grant a requested variance; (4) any right to collaterally attack the defendant's
10 conviction and sentence under 28 U.S.C. § 2255, or any other collateral attack; and (5)
11 any right to file a motion for modification of sentence, including under 18 U.S.C. §
12 3582(c).

13 30. The defendant acknowledges that this waiver shall result in the dismissal of any appeal
14 or collateral attack the defendant might file challenging his conviction or sentence in
15 this case. If the defendant files a notice of appeal or a habeas petition, notwithstanding
16 this agreement, the defendant agrees that this case shall, upon motion of the
17 government, be remanded to the district court to determine whether the defendant is in
18 breach of this agreement and, if so, to permit the government to withdraw from the plea
19 agreement. This waiver shall not be construed to bar an otherwise-preserved claim of
20 ineffective assistance of counsel or of "prosecutorial misconduct" (as that term is
21 defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

22 Perjury and Other False Statement Offenses and Other Offenses

23 31. Nothing in this agreement shall be construed to protect the defendant in any way from
24 prosecution for perjury, false declaration or false statement, or any other offense
25 committed by the defendant after the date of this agreement. In addition, if the defendant
26 commits any criminal offense between the date of this agreement and the date of
27 sentencing, the government will have the right to withdraw from this agreement. Any
28 information, statements, documents and evidence which the defendant provides to the

1 United States pursuant to this agreement may be used against the defendant in all such
2 proceedings.

3 Reinstitution of Prosecution

4 32. If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any court
5 in a later proceeding, the government will be free to prosecute the defendant for all
6 charges as to which it has knowledge, and any charges that have been dismissed because
7 of this plea agreement will be automatically reinstated. In such event, the defendant
8 waives any objections, motions, or defenses based upon the Speedy Trial Act or the
9 Sixth Amendment to the Constitution as to the delay occasioned by the later
10 proceedings. The defendant agrees that the stipulated sentencing range or sentence set
11 forth under "Agreements Regarding Sentence" will not be offered if prosecution is re-
12 instituted. The defendant understands that any statements made at the time of the
13 defendant's change of plea or sentencing may be used against the defendant in any
14 subsequent hearing, trial or proceeding as permitted by Fed R. Crim. P. 11(f).

15 Disclosure of Information to U.S. Probation Office

16 33. The defendant understands the United States' obligation to provide all pertinent
17 information in its file regarding the defendant to the U.S. Probation Department.

18 34. The defendant understands and agrees to cooperate fully with the United States
19 Probation Office in providing (a) all criminal history information, i.e., all criminal
20 convictions as defined under the Sentencing Guidelines; (b) all financial information,
21 i.e., present financial assets or liabilities that relate to the ability of the defendant to pay
22 a fine or restitution; (c) all history of drug abuse which would warrant a treatment
23 condition as part of sentencing; and (d) all history of mental illness or conditions which
24 would warrant a treatment condition as part of sentencing.

25 Plea Addendum

26 35. This written plea agreement, and any written addenda filed as attachments to this plea
27 agreement, contain all the terms and conditions of the plea. Any additional agreements,
28 if any such agreements exist, shall be recorded in a separate document and may be filed

1 with the Court under seal. Accordingly, additional agreements, if any, may not be in
2 the public record.

3 WAIVER OF THE DEFENDANT'S RIGHTS AND FACTUAL BASIS

4 Waiver of Rights

5 36. I have read each of the provisions of the entire plea agreement with the assistance of
6 counsel and understand its provisions. I have discussed the case and my constitutional
7 and other rights with my attorney. I understand that by entering my plea of guilty I will
8 be giving up my right to plead not guilty; to trial by jury; to confront, cross-examine,
9 and compel the attendance of witnesses; to present evidence in my defense; to remain
10 silent and refuse to be a witness against myself by asserting my privilege against self-
11 incrimination; all with the assistance of counsel; to be presumed innocent until proven
12 guilty beyond a reasonable doubt; and to appeal.

13 37. I fully understand that, if I am granted probation or placed on supervised release by the
14 court, the terms and conditions of such probation/supervised release are subject to
15 modification at any time.

16 38. I further understand that, if I violate any of the conditions of my probation/supervised
17 release, my probation/supervised release may be revoked and upon such revocation,
18 notwithstanding any other provision of this agreement, I may be required to serve a
19 term of imprisonment or my sentence may otherwise be altered.

20 39. I agree to enter my guilty plea as indicated above on the terms and conditions set forth
21 in this agreement.

22 40. I have been advised by my attorney of the nature of the charge to which I am entering
23 my guilty plea. I have been advised by my attorney of the nature and range of the
24 possible sentence, and that I will not be able to withdraw my guilty plea if I am
25 dissatisfied with the sentence the court imposes.

26 41. My guilty plea is not the result of force, threats, assurance or promises other than the
27 promises contained in this agreement. I agree to the provisions of this agreement as a
28 voluntary act on my part, rather than at the direction of or because of the

1 recommendation of any other person, and I agree to be bound according to its
2 provisions.

3 42. I agree that this written plea agreement contains all the terms and conditions of my plea
4 and that promises made by anyone (including my attorney) that are not contained within
5 this written plea agreement are without force and effect and are null and void.

6 43. I am satisfied that my defense attorney has represented me in a competent manner.

7 44. I am fully capable of understanding the terms and conditions of this plea agreement.

8 45. I am not now on or under the influence of any drug, medication, liquor, or other
9 intoxicant or depressant, which would impair my ability to fully understand the terms
10 and conditions of this plea agreement.

11 Factual Basis and Relevant Conduct

12 46. I further agree that the following facts accurately describe my conduct in connection
13 with the offense to which I am pleading guilty and that if this matter were to proceed to
14 trial the government could prove these facts and the elements of the offense beyond a
15 reasonable doubt:

16 In August 2002, I, the defendant Kevin Jon Cummings, was involved in
17 a motor vehicle accident. In October 2002, I applied for disability
18 benefits from the Social Security Administration (SSA) relating to the
19 injuries sustained from my accident. In my application for disability, I
20 acknowledged that I was required to report to SSA: (1) improvement in
21 my medical condition such that I could go back to work; and (2) any
22 work that I was doing. I was also informed and aware via this
23 application that improvement in my medical condition and work that I
24 was doing were conditions that could affect my continued right to collect
25 disability benefits from SSA.

26 In my application for disability benefits, I informed the SSA that I had
27 the following health-related conditions: (1) inability to concentrate; (2)
28 daily debilitating headaches; (3) inability to multitask; (4) sensitivity to
light requiring the need to be in a dark room; (5) inability to drive; (6)
often confused; (7) light-headed, blurred vision; (8) seizure activity and
depression; (9) loss of taste and smell; (10) irritable and cranky; and (11)
problems with memory such that I needed constant reminders to
conduct simple tasks such as showering, eating or taking medications.

1 Based on my representations and my medical evaluation, SSA
 2 determined that I qualified for disability benefits, concluding that I had
 3 an organic mental disorder/post-concussion syndrome and a major
 depressive disorder relating to the accident.

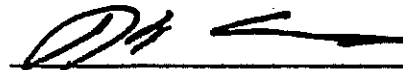
4 I began receiving SSA disability benefits in February 2003.

5 In 2006, SSA learned that I had employee wages from 2005 and 2006.
 6 When SSA inquired into those wages, I, through my companies,
 7 responded by completing SSA forms about those wages. On, September
 8 13, 2007, I caused one of my employees to submit an SSA Form 821
 9 representing my status with one of my plumbing companies as "shop
 10 help" with limited job duties when, in fact, I was running the company
 11 as its owner. Similarly, on January 25, 2008, I caused one of my
 12 employees to submit an earnings report (Form SSA L725) stating that I
 13 earned \$7,692.00 for that company. I failed to disclose on this form that
 14 I was the owner of the company and taking draws from the company in
 15 amounts substantially higher than my salary. Likewise, on September
 13, 2007, I caused one of my employees to submit an SSA Form 821
 stating I tried to work as a plumber for my other plumbing company but
 I could not remember the simplest task. During the reported time on the
 form (October 2005-January 2006), I was working as the president of
 that company.

16 I acknowledge that given the statements in the Forms 821 and L725
 17 referenced above, which I knew to be false, I caused a false
 18 representation to be made to the Social Security Administration. The
 19 false representation was material in that I was required to report the
 20 work I was doing for my companies since I was receiving SSA disability
 benefits.

21 I concealed the fact that I was working from the SSA while continuing
 22 to collect disability benefits from 2005 through January 2014 resulting
 23 in a loss to SSA of approximately \$305,371.20.

24 5/1/20.
 25 Date


 26 Kevin Jon Cummings
 Defendant

27 DEFENSE ATTORNEY'S APPROVAL
 28 

1 47. I have discussed this case and the plea agreement with my client, in detail, and have
 2 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
 3 constitutional and other rights of an accused (including advising the defendant that he
 4 is waiving his right to appeal), the factual basis for and the nature of the offense to
 5 which the guilty plea will be entered, possible defenses, and the consequences of the
 6 guilty plea including the maximum statutory sentence possible. I have further discussed
 7 the concept of the advisory sentencing guidelines with the defendant. No assurances,
 8 promises, or representations have been made to me or to the defendant by the United
 9 States or by any of its representatives which are not contained in this written agreement.

10 48. I concur in the entry of the plea as indicated above and on the terms and conditions set
 11 forth in this agreement as in the best interests of my client. I agree to make a bona fide
 12 effort to ensure that the guilty plea is entered in accordance with all the requirements
 13 of Fed. R. Crim. P. 11.

14
 15 5/1/20.
 16 Date

Michael Bloom
 Michael Bloom
 Attorney for Defendant

18 UNITED STATES' APPROVAL

19 49. I have reviewed this matter and the plea agreement. I agree on behalf of the United
 20 States that the terms and conditions set forth are appropriate and are in the best interests
 21 of justice.

22 MICHAEL BAILEY
 23 United States Attorney
 24 District of Arizona

25 4/30/20
 26 Date

JONATHAN
 GRANOFF
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 Date: 2020.04.30 15:33:08
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27 Jonathan B. Granoff
 28 Lori L. Price
 Assistant U.S. Attorneys