

AF Approval YB

Chief Approval JF

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 2:15-cr-67-FtM-38MRM

ROGER EUGENE HAGOOD

**PLEA AGREEMENT**

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by A. Lee Bentley, III, United States Attorney for the Middle District of Florida, and the defendant, Roger Eugene Hagood, and the attorney for the defendant, Douglas Molloy, mutually agree as follows:

**A. Particularized Terms**

1. Counts Pleading To

The defendant shall enter a plea of guilty to Counts One, Six, Ten, and Thirteen of the Indictment. Counts One, Six, Ten, and Thirteen charge the defendant with Bank Fraud, in violation of 18 U.S.C. § 1344.

2. Maximum Penalties

Counts One, Six, Ten, and Thirteen each carry a maximum term of imprisonment of 30 years, without parole, a fine of not more than the greater of \$1,000,000 or twice the gross gain or twice the gross loss, a term of supervised release of not more than 5 years, and a special assessment of \$100.00. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense(s), and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

Defendant's Initials RH

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offenses with which defendant has been charged and to which defendant is pleading guilty. The elements of Counts One, Six, Ten, and Thirteen are:

- First: The defendant carried out or attempted to carry out a scheme to defraud a financial institution or to obtain money, assets, or other property from a financial institution by using false or fraudulent pretenses, representations, or promises about a material fact;
- Second: The false or fraudulent pretenses, representations, or promises were material;
- Third: The defendant intended to defraud the financial institution; and
- Fourth: The financial institution was federally insured.

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts Two, Three, Four, Five, Seven, Eight, Nine, Eleven, Twelve, Fourteen and Fifteen of the Indictment, will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Mandatory Restitution to Victim of Offenses of Conviction

Pursuant to 18 U.S.C. § 3663A(a) and (b), defendant agrees to make full restitution to Fifth Third Bank and Capital Bank and any other victim of the offenses.

Defendant's Initials PLS

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Guideline Adjustment

Pursuant U.S.S.G. § 3C1.1, the defendant agrees that he will not object to a United States recommendation that in sentencing the defendant the Court apply a two-level guideline adjustment for obstructing or impeding the administration of justice.

9. Acceptance of Responsibility - Three Levels

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

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the

provisions of USSG §3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to make a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

10. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to Title 18, United States Code, Sections 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. The assets to be forfeited specifically include, but are not limited to, a money judgment in the amount of \$677,722.00 representing the amount of proceeds obtained as a result of the offenses charged in Counts One, Six, Ten, and Thirteen. The defendant also hereby agrees to waive all constitutional, statutory and procedural challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging

instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1)(A), the United States and the defendant request that promptly after accepting this Plea Agreement, the Court make a determination that the government has established the amount of the proceeds of the offense(s) to which defendant is pleading guilty is \$677,722.00 and enter an order of forfeiture. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

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

The defendant agrees to take all steps necessary to identify and locate all substitute assets and to transfer custody of such assets to the United States before the defendant's sentencing. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

The defendant agrees that Federal Rule of Criminal Procedure 11 and USSG §1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of his cooperation.

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

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.

**B. Standard Terms and Conditions**

1. **Restitution, Special Assessment and Fine**

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

statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this obligation is satisfied, the Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$400.00, payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

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

3. Immigration Consequences of Pleading Guilty

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

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the counts

to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current

credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

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

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

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing

Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

9. Filing of Agreement

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

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature

of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

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

Defendant's Initials 

## FACTS

Fifth Third Bank and Capital Bank were financial institutions with deposits insured by the Federal Deposit Insurance Corporation. Both banks maintained branch offices in southwest Florida.

Information Matrix Technologies, Inc. d/b/a Coral Palm Auto Sales (hereinafter referred to as "Coral Palm Auto Sales") was a Florida corporation operated and managed by defendant Roger Eugene Hagood. It was engaged in the business of purchasing and selling used cars. Defendant Hagood, through Coral Palm Auto Sales, maintained a business checking account at Capital Bank, account number ending in 0406. Defendant Hagood was an authorized signatory on the account.

Auto Dealers Funding, Inc. (hereinafter referred to as "Auto Dealers Funding") was a Florida corporation engaged in the business of providing financing to used car dealerships, including Coral Palm Auto Sales, to purchase automobiles. Auto Dealers Funding provided loans to Coral Palm Auto Sales for the purchase of automobiles. Specifically, Coral Palm Auto Sales provided a packet of vehicle titles as security to procure each loan it received from Auto Dealers Funding. Coral Palm Auto Sales made payments on each loan using proceeds from its sales of vehicles to customers or at auction. Once each loan was paid in full, Auto Dealers Funding released the packet of vehicle titles used to secure the loan back to Coral Palm Auto Sales.

Auto Dealers Funding maintained a business checking account at Fifth Third Bank, account number ending in 5450. Auto Dealers Funding used the same checking account to make loans to Coral Palm Auto Sales and to receive loan payments from Coral Palm Auto Sales.

Fifth Third Bank and Capital Bank would forward to processing centers checks drawn upon other banks and presented for deposit into Fifth Third Bank or Capital Bank accounts. Ultimately, each check was transmitted to the bank of origin for payment. Typically, there was a delay of at least a day between the time that a check was deposited in either Fifth Third Bank or Capital Bank and the time that check was processed, transmitted and presented to the bank of origin to be paid from funds available in the account of the check writer. Fifth Third Bank and Capital Bank would credit the bank accounts of Auto Dealers Funding and Coral Palm Auto Sales, respectively, with funds equaling the face value of checks deposited into the accounts without requiring a delay to verify that the checks deposited would be honored by the banks upon which they were drawn.

From approximately November 2011, through December 2011, in Lee County, Roger Eugene Hagood, did knowingly and intentionally execute a scheme and artifice to defraud Fifth Third Bank and Capital Bank, by means of materially false and fraudulent pretenses, representations and promises. Defendant Hagood engaged in a check kiting scheme by writing checks on the Coral Palm Auto Sales checking account at Capital Bank, knowing that the available balance in that account would be insufficient to cover the checks when they were presented to Capital Bank for payment (hereinafter "worthless checks"). Defendant Hagood made the worthless checks payable to Auto Dealers Funding in purported payment of loans Auto Dealers Funding had provided to Coral Palm Auto Sales to purchase automobiles.

Defendant Hagood intended that the worthless checks be deposited into the Auto Dealers Funding checking account at Fifth Third Bank and, thereby, cause Fifth Third

Bank to credit the Auto Dealers Funding checking account in the face amount of the worthless checks. By purportedly making loan payments to Auto Dealers Funding using the worthless checks, defendant Hagood caused Auto Dealers Funding to write additional loan checks on its checking account at Fifth Third Bank made payable to Coral Palm Auto Sales. Defendant Hagood then deposited or caused to be deposited the additional loan checks into the Coral Palm Auto Sales checking account at Capital Bank and cause Capital Bank to credit the Coral Palm Auto Sales checking account in the face amount of the additional loan checks. Defendant Hagood did so despite knowing that the available balance in the Auto Dealers Funding checking account would be insufficient to cover the additional loan checks when they were presented to Fifth Third for payment because the worthless checks he had written would not be paid. Defendant Hagood then used the funds, represented by the additional loan checks credited to the Coral Palm Auto Sales checking account, to pay for other expenses before the fact that he had written worthless checks was discovered. The total of all worthless checks was \$1,592,121.00. In executing the scheme to defraud, defendant Hagood took advantage of the float – that is, the time that elapsed between the deposit of a check in Fifth Third Bank and its payment by Capital Bank – and caused the banks to suffer financial loss.

On the dates listed below, defendant Hagood knowingly and willfully executed the scheme and artifice to defraud a financial institution and to obtain moneys, funds, credits, assets, and property under the custody and control of a financial institution, by causing the deposit into the Auto Dealers Funding checking account at Fifth Third Bank, account number ending in 5450, the below-listed insufficient funds worthless checks

drawn on the Coral Palm Auto Sales checking account at Capital Bank, account number ending in 0406:

Count	Date	Check Number	Check Amount
One	December 2, 2011	28060	\$167,286.00
Six	December 5, 2011	28119	\$177,016.00
Ten	December 7, 2011	28149	\$167,032.00
Thirteen	December 9, 2011	28167	\$166,388.00

On March 24, 2015, Hagood was served with a federal grand jury subpoena requiring him to produce, as custodian of records, by April 8, 2015, any and all business records related to Information Matrix Technologies d/b/a Coral Palm Auto Sales covering the period of August 1, 2011, through January 31, 2012. On March 29, 2015, Hagood attempted to surreptitiously dispose of 20 banker's boxes of records and documents pertaining to Coral Palm Auto Sales by throwing them in a dumpster located about a mile and a half from his residence. A video surveillance camera partially captured Hagood attempting to dispose of the boxes. These boxes were retrieved by the Lee County Sheriff's Office and turned over to the FBI. A portion of the records and documents Hagood tried to destroy were responsive to the grand jury subpoena.

12. Entire Agreement

Defendant's Initials PH

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

13. Certification

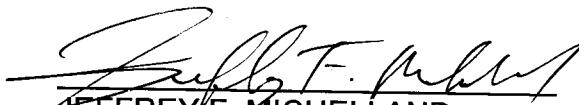
The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 11 day of November, 2015.

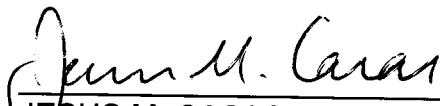
  
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Defendant's Initials 