

AF Approval SW

Chief Approval CR

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:18-cr-33-T-36AAS

JASON PETER KENDALL

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Maria Chapa Lopez, United States Attorney for the Middle District of Florida, and the defendant, JASON PETER KENDALL, and the attorney for the defendant, Tamara Theiss, mutually agree as follows:

A. Particularized Terms

1. Counts Pleading To

The defendant shall enter a plea of guilty to Counts One, Seventeen, Twenty-Five, and Twenty-Seven of the Superseding Indictment. Count One charges the defendant with bank fraud, in violation of 18 U.S.C. § 1344. Count Seventeen charges the defendant with aggravated identity theft, in violation of 18 U.S.C. § 1028A. Count Twenty-Five charges the defendant with securities counterfeiting, in violation of 18 U.S.C. § 513(a). Count Twenty-Seven charges the defendant with attempted bank robbery, in violation of 18 U.S.C. § 2113(a).

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2. Minimum and Maximum Penalties

Count One is punishable by a maximum term of imprisonment of thirty years, a fine of up to \$1,000,000, a term of supervised release of not more than five years, and a special assessment of \$100. Count Seventeen is punishable by a mandatory consecutive term of imprisonment of two years, a fine of up to \$250,000, a term of supervised release of not more than one year, and a special assessment of \$100. Count Twenty-Five is punishable by a maximum term of imprisonment of ten years, a fine of up to \$250,000, a term of supervised release of not more than three years, and a special assessment of \$100. Count Twenty-Seven is punishable by a maximum term of imprisonment of twenty years, a fine of \$250,000, a term of supervised release of not more than three years, and a special assessment of \$100. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offenses, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offenses, or to the community, as set forth below.

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.

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The elements of Count One, charging bank fraud, are:

- First: a scheme existed to obtain moneys, funds, or credit in the custody of a federally insured bank by fraud;
- Second: the defendant participated in the scheme by means of material false pretenses, representations, or promises, which were material; and
- Third: the defendant acted knowingly.

The elements of Count Seventeen, charging aggravated identity theft, are:

- First: the defendant knowingly transferred, possessed, or used a means of identification of another person;
- Second: the defendant knew the means of identification belonged to an actual person;
- Third: the defendant did so without lawful authority;
- Fourth: during and in relation to a felony enumerated in 18 U.S.C. § 1028A(c), in this case, bank fraud.

The elements of Count Twenty-Five, charging securities counterfeiting, are:

- First: the defendant made, passed or attempted to pass, or possessed a counterfeit or forged security;
- Second: the counterfeit or forged security was of an organization; and

Third: the defendant possessed the counterfeit or forged security with intent to deceive another person, organization, or government.

The elements of Count Twenty-Seven, charging attempted bank robbery, are:

First: the defendant attempted to take money from the presence of another while that money was in the care or custody of BB&T Bank;

Second: such attempted taking was by intimidation; and

Third: the deposits of BB&T Bank were then insured by the Federal Deposit Insurance Corporation.

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts Two through Sixteen, Eighteen through Twenty-Four, and Twenty-Six, 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 the 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.

6. 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.

7. 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 recommend 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 file 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.

8. 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 18 U.S.C. §§ 981(a)(1)(C), 982(a)(2)(A) and 492, and 28 U.S.C. § 2461(c), whether in the possession or control of the United States, the defendant or defendant's nominees.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil judicial or administrative forfeiture action. The defendant also agrees to waive all constitutional, statutory and procedural challenges (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.

If the United States seeks the forfeiture of specific assets 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 to take all steps necessary to identify and locate all property subject to forfeiture and to transfer custody of such property to the United States before the defendant's sentencing. To that end, the defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control directly or indirectly, including all assets held by nominees, to execute any documents requested by the United States to obtain from any other parties by lawful means any records of assets owned by the defendant, and to consent to the release of the defendant's tax returns for the previous five years. The defendant further agrees to be interviewed by the

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government, prior to and after sentencing, regarding such assets and their connection to criminal conduct. 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 the defendant's cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to the forfeitable assets before the defendant's sentencing. In addition to providing full and complete information about forfeitable 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.

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the defendant may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

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The defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that determination shall be binding upon defendant's heirs, successors and assigns until the agreed forfeiture, including any agreed forfeiture amount, is collected in full.

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 offenses, 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 offenses, 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 (28 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. The special assessment is due on the date of sentencing.

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 provides 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.

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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

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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

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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.

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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.

FACTS

Graf & Sons Scheme

On February 26, 2016, JASON PETER KENDALL (the “defendant”) opened TD Ameritrade account ending -7961 jointly in his and identity-theft victim M.K.’s names. He provided M.K.’s name, Social Security number, and date of birth to TD Ameritrade to open the account. M.K. had not given the defendant permission or authority to use her personal identifying information to open this account. [COUNT SEVENTEEN]

The defendant funded TD Ameritrade account ending -7961 by authorizing a fraudulent transfer of \$100,000 into that account from the business account ending -1588 held by Graf & Sons, Inc. (“Graf & Sons”) at Commerce Bank. Graf & Sons had not given the defendant permission or authority to access its account or any funds therein. The deposits of Commerce Bank were insured by the Federal Deposit Insurance Corporation (“FDIC”) at the time. [COUNT ONE]

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The defendant subsequently authorized two more fraudulent transfers, totaling an additional \$350,000, from Graf & Sons' Commerce Bank account into accounts under the defendant's control, which he had opened in the names of other individuals whose personal identifying information he had stolen.

Vology Schemes

On February 29, 2016, the defendant opened five accounts at TD Ameritrade in his own name. He funded these accounts with fraudulent transfers, which totaled \$750,000, from a business account held by Vology, Inc. ("Vology"), at SunTrust Bank. Vology had not given the defendant permission or authority to access its account or any funds therein.

On an unknown date, but no later than on or around June 14, 2016, the defendant obtained a check that Vology had issued to Trilogy Innovations, LLC ("Trilogy") in January 2016, drawn on Vology's business account at SunTrust bank. The defendant did not have permission or authority from Vology or Trilogy to take or possess this check. The defendant used this check to create counterfeit checks payable to himself, which he kept at his place of business in Seminole, Florida. These included two counterfeit checks, ostensibly issued by Vology to the defendant, payable in the amounts of

\$50,498.05 and \$4,498.05. The defendant had endorsed both of these counterfeit checks for deposit. [COUNT TWENTY-FIVE]

Payment Alliance Scheme

On May 6, 2016, the defendant authorized a fraudulent automated clearing house (“ACH”) wire transfer of \$265,314.00 from the business account held by Payment Alliance International, Inc. (“Payment Alliance”) at Wells Fargo bank into an account in his name. Payment Alliance had not given the defendant permission or authority to access its account or any funds therein.

Three days later, the defendant authorized another fraudulent ACH wire transfer from the business account held by Payment Alliance at Wells Fargo into an account in his name. This fraudulent transfer was in the amount of \$299,999.82. Again, Payment Alliance had not given the defendant permission or authority to access its account or any funds therein.

Schemes Targeting W.C., P.K., and J.A.K.

On May 1, 2016, the defendant opened a Capital One bank account in the name of W.C., providing W.C.’s name, Social Security number, and date of birth to the bank in opening the account. The defendant did not have permission or authority to possess or use W.C.’s personal identifying information.

On May 3, 2016, the defendant logged into an online account held by P.K. and J.A.K. at Wells Fargo bank, inputting P.K. and J.A.K.'s account number to do so. Once logged in, the defendant authorized a fraudulent \$135,000 wire transfer from P.K. and J.A.K.'s account into the Capital One account that the defendant had opened in W.C.'s name. The defendant did not have permission or authority to possess or use P.K. and J.A.K.'s account number, nor to access that account or any funds therein.

The next day, the defendant opened a TD Ameritrade account in the name of W.C., providing W.C.'s name, Social Security number, and date of birth to TD Ameritrade in opening the account. The defendant funded this account with a fraudulent \$125,000 wire transfer from the Capital One account that the defendant had opened in W.C.'s name, which held the fraudulent \$135,000 transfer from P.K. and J.A.K.'s Wells Fargo account. The defendant subsequently called TD Ameritrade and impersonated W.C. in an effort to gain access to the fraudulently obtained funds.

On May 17, 2016, the defendant called the Charles Schwab Corporation and impersonated P.K. to gain access to P.K.'s online brokerage accounts. The defendant provided P.K.'s name, date of birth, account username, and phone number in doing so, but the defendant had neither permission nor authority to possess or use P.K.'s personal identifying

information in this manner. After successfully resetting P.K.'s online login password, the defendant logged into P.K.'s online Charles Schwab accounts and authorized two fraudulent transfers of \$400,000 each into a TD Bank account that the defendant held in his name. The defendant did not have permission or authority to access P.K.'s Charles Schwab accounts or any funds therein.

Three days later, the defendant forged P.K.'s signature and wrote P.K.'s account number on a domestic wire request form and faxed the completed form to Charles Schwab. The form purported to authorize a transfer of \$375,000 from one of P.K.'s Charles Schwab account into a TD Ameritrade account held by the defendant. The request, however, was fraudulent, as the defendant did not have permission or authority to forge P.K.'s signature, use or possess P.K.'s account number for this purpose, or access P.K.'s Charles Schwab account or any funds therein.

The same day, the defendant opened a TD Ameritrade online account in P.K.'s name, providing P.K.'s name, address, Social Security number, and date of birth to TD Ameritrade to do so. The defendant did not have permission or authority to possess or use P.K.'s personal identifying information for this purpose. The defendant funded the TD Ameritrade account by authorizing a fraudulent transfer of \$150,000 from one of P.K.'s

Charles Schwab accounts. The defendant did not have permission or authority to access that account or any funds therein.

Attempted Robbery of BB&T Bank

On September 20, 2017, the defendant walked into a BB&T Bank branch located in Seminole, Florida, and attempted to rob it. After entering, he approached the counter and handed a teller a note reading, "Give me all your 20s, 50s, and 100s." He then told the teller that he had a gun. After the teller activated a silent alarm alerting other bank employees to the attempted robbery, the defendant fled the bank, having failed to obtain any money. The deposits of BB&T Bank were insured by the FDIC at the time. [COUNT TWENTY-SEVEN]

He does not remember saying those words.

12. Entire Agreement

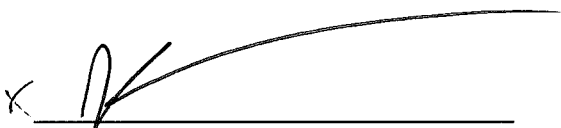
This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

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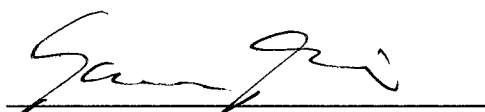
13. Certification

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 ²⁰¹⁸ 16th day of September, 2018.

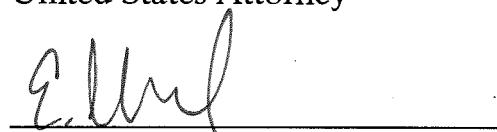


Jason Peter Kendall
Defendant

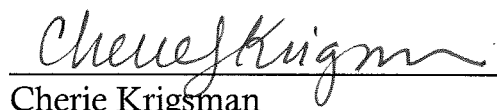


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