

**FILED**  
UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

APR 18 2022

MITCHELL R. ELFERS  
CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD KESSLER,

Defendant.

Case 1:21-cr-265-DHU

**PLEA AGREEMENT**

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, RICHARD KESSLER, and the Defendant's counsel, Buck Glanz.

**REPRESENTATION BY COUNSEL**

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

**RIGHTS OF THE DEFENDANT**

2. The Defendant further understands the Defendant's rights:
- a. to be prosecuted by indictment;
  - b. to plead not guilty, or having already so pleaded, to persist in that plea;
  - c. to have a trial by jury; and

- d. at a trial:
  - i. to confront and cross-examine adverse witnesses,
  - ii. to be protected from compelled self-incrimination,
  - iii. to testify and present evidence on the Defendant's own behalf, and
  - iv. to compel the attendance of witnesses for the defense.

**WAIVER OF RIGHTS AND PLEA OF GUILTY**

3. The Defendant agrees to waive these rights and to plead guilty to each count of the Information listed below:

Count 1: Mail Fraud in violation of 18 U.S.C. § 1341;

Count 2: Wire Fraud in violation of 18 U.S.C. § 1343; and

Counts 3, 4, 5 and 6: Failure to File Tax Returns in violation of 26 U.S.C. § 7203.

**SENTENCING**

4. The Defendant understands that the maximum penalties provided by law for these offenses are—

Count 1—Mail Fraud in violation of 18 U.S.C. § 1341:

- a. imprisonment for a period of not more than 20 years;
- b. a fine not to exceed the greater of \$250,000, or twice the pecuniary gain to the Defendant or pecuniary loss to the victim;
- c. a term of supervised release of not more than 3 years to follow any term of imprisonment (note: if the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised

release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release);

- d. forfeiture of any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 1341;
- e. a mandatory special penalty assessment of \$100.00; and
- f. restitution as may be ordered by the Court.

Count 2—Wire Fraud in violation of 18 U.S.C. § 1343:

- a. imprisonment for a period of not more than 20 years;
- b. a fine not to exceed the greater of \$250,000, or twice the pecuniary gain to the Defendant or pecuniary loss to the victim;
- c. a term of supervised release of not more than 3 years to follow any term of imprisonment (note: if the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release);
- d. forfeiture of any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 1343;
- e. a mandatory special penalty assessment of \$100.00; and
- f. restitution as may be ordered by the Court.

Counts 3, 4, 5 and 6—Failure to File Tax Return in violation of 26 U.S.C. § 7203:

- a. imprisonment for a period of not more than 1 year;

- b. a fine not to exceed the greater of \$25,000;
- c. a term of supervised release of not more than 1 year to follow any term of imprisonment (note: if the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release);
- d. a mandatory special penalty assessment of \$100.00; and
- e. restitution as may be ordered by the Court.

5. The parties recognize that the United States Sentencing Guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

#### **ELEMENTS OF THE OFFENSE**

6. If this matter proceeded to trial, the Defendant understands that the United States would be required to prove, beyond a reasonable doubt, the following elements for the respective offenses charged in the Information.

##### **Count 1—Mail Fraud in violation of 18 U.S.C. § 1341:**

*First:* the Defendant devised or intended to devise a scheme to defraud, as alleged in the Information;

*Second:* the Defendant acted with specific intent to defraud;

*Third:* the Defendant used the mails for the purpose of carrying out the scheme;  
and

*Fourth:* the scheme employed false or fraudulent pretenses, representations, or

promises that were material.

Count 2—Wire Fraud in violation of 18 U.S.C. § 1343:

- First:* the Defendant devised or intended to devise a scheme to defraud, as alleged in the Information;
- Second:* the Defendant acted with specific intent to defraud;
- Third:* the Defendant used interstate or foreign wire communications facilities for the purpose of carrying out the scheme; and
- Fourth:* the scheme employed false or fraudulent pretenses, representations, or promises that were material.

Counts 3, 4, 5 and 6—Failure to File Tax Return in violation of 26 U.S.C. § 7203:

- First:* the Defendant was required to file an income tax return for the year charged in each respective count;
- Second:* the Defendant failed to file an income tax return for the year charged in the respective count;
- Third:* the Defendant acted willfully, that is, with the voluntary intent to violate his known legal duty to file a tax return.

**DEFENDANT'S ADMISSION OF FACTS**

7. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offenses to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offenses to which I am pleading guilty beyond a reasonable

doubt, including any facts alleged in the Information that increase the statutory minimum or maximum penalties. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct.

A. Counts 1 and 2

- (1) During the period material to this case, I, RICHARD KESSLER, worked as a financial adviser and investment broker. I conducted my business through Guardian Group Investments, LLC, which I registered with the New Mexico Secretary of State. I was the sole proprietor and employee of Guardian Group Investments. At all times material to this case, Guardian Group Investments was registered with the State of New Mexico Regulation and Licensing Department Securities Division (“N.M. Securities Division”) as an investment adviser, and I, RICHARD KESSLER, was registered with the N.M. Securities Division as an investment adviser representative.
- (2) While doing business as Guardian Group Investments, I, RICHARD KESSLER, earned commissions from managing retirement accounts of several businesses. My business clients included an oil and gas company in Farmington, New Mexico.
- (3) I, RICHARD KESSLER, occasionally made presentations to officers and employees of that oil and gas company regarding financial investments and retirement. In private conversations with individuals following such presentations, I solicited investments and persuaded individuals to entrust their retirement funds to Guardian Group Investments. I represented to those individuals that I would place their retirement funds in secure investments.

(4) In 2016, I, RICHARD KESSLER, persuaded four individuals (referred to herein as “C.K.,” “F.B.,” “V.C.,” and “L.J.”) to entrust funds totaling \$121,276 to me and Guardian Group Investments. More specifically:

- (a) C.K. previously had an Individual Retirement Account (IRA) managed by an investment firm in Indiana. I, RICHARD KESSLER, caused and helped C.K. to call that firm in Indiana from New Mexico to request that they liquidate C.K.’s IRA and mail the proceeds to Guardian Investments. Pursuant to those instructions, the investment firm in Indiana mailed a check in the sum of in the sum of \$23,796 to Guardian Investments at my residential address in Albuquerque, New Mexico. I deposited that check in Guardian Investment’s account at Sandia Laboratory Federal Credit Union.
- (b) F.B. previously had an investment account with Oppenheimer Funds Services, a New York company. I, RICHARD KESSLER, caused and helped F.B. to request the transfer funds from Oppenheimer Funds Services to Guardian Investments. Towards that end, I transmitted a facsimile or fax to Oppenheimer Funds Services from New Mexico via the interstate wire representing that I had established a qualified Individual Retirement Account for F.B.’s retirement funds. Pursuant to those requests and representations, Oppenheimer Services mailed four checks totaling \$47,481.35 to Guardian Investments at my residential address in Albuquerque, New Mexico. I deposited those checks in Guardian Investment’s account at Sandia Laboratory Federal Credit Union.

- (c) V.C. was employed by the Farmington-based oil and gas company, where V.C. had an employee retirement account. I, RICHARD KESSLER, persuaded and helped V.C. withdraw funds from that account, which were mailed to V.C.'s home. V.C. thereafter deposited those funds in his bank account and obtained a cashier's check from that bank in the sum of \$30,000 payable to Guardian Investments. V.C. subsequently gave that check to me, and I was to deposit and manage those funds in an Individual Retirement Account for V.C. I instead deposited that check in Guardian Investment's account at Sandia Laboratory Federal Credit Union.
- (d) L.J. entrusted \$20,000 to me, RICHARD KESSLER. L.J. mailed a cashier's check in that sum to my residential address pursuant to my instructions. I had promised and represented to L.J. that I would deposit and manage those funds in an Individual Retirement Account on his behalf. I deposited Kessler's home address at Kessler's instruction, again to be transferred into an IRA. I instead deposited that check in Guardian Investment's account at Sandia Laboratory Federal Credit Union.
- (5) I, RICHARD KESSLER, admit that I devised and executed this scheme with the intent to defraud C.K., F.B., V.C., and L.J., and to obtain money from them by means of false and fraudulent pretenses, representations and promises. I, RICHARD KESSLER, did not invest the money that I received from C.K., F.B., V.C., and L.J., in retirement accounts or instruments as I had promised and represented that I would. I instead converted and misappropriated their retirement funds for my own purposes. I used these investors' money to, among



other things, purchase a truck and make child support payments. I also transferred a portion of these investors' funds to my personal account at Wells Fargo Bank, and thereafter used those funds as my own money. Additionally, I used a portion of the money that I obtained from V.C. and L.J. to make payments to earlier investors in order to sustain and perpetuate the continuing scheme.

- (6) I, RICHARD KESSLER, further admit that as part of and in furtherance of that fraudulent scheme, I transmitted, or caused others to transmit, sounds, signals and writings by means of interstate wire communications. I specifically admit that I transmitted facsimiles of letters from New Mexico to Oppenheimer Funds Services in New York via the interstate wire for purposes of carrying out the Ponzi scheme and obtaining F.B.'s retirement funds under false and fraudulent pretenses, promises, and representations.
- (7) I, RICHARD KESSLER, caused items to be mailed through the United States Postal Service or sent by private commercial interstate carrier. I specifically admit that I caused L.J. to mail a check in the sum of \$20,000 to me for purposes of carrying out the Ponzi scheme and obtaining L.J.'s money under the false and fraudulent pretenses, promises, and representations that I would place deposit and manage those funds in an Individual Retirement Account.

B. Counts 3, 4, 5 and 6

- (1) I, RICHARD KESSLER, admit that I willfully did not file a federal income tax return for tax years 2014, 2015, 2016, and 2017.
- (2) I, RICHARD KESSLER, admit that my total or gross income in 2014 was

approximately \$101,570. Federal law and regulations required taxpayers with gross income of \$13,050 in 2014 to file a federal income tax return. My gross income in 2014 exceeded the federal filing threshold, and I was required by law to file an income tax return with the Internal Revenue Service by on or about April 15, 2015. Although I knew that I was required to file an income tax return, I willfully elected not to file a federal income tax return for 2014.

- (3) I, RICHARD KESSLER, admit that my total or gross income in 2015 was approximately \$62,136. Federal law and regulations required taxpayers with gross income of \$13,250 in 2015 to file a federal income tax return. My gross income in 2015 exceeded the federal filing threshold, and I was required by law to file an income tax return with the Internal Revenue Service by on or about April 18, 2016. Although I knew that I was required to file an income tax return, I willfully elected not to file a federal income tax return for 2015.

- (4) I, RICHARD KESSLER, admit that my total or gross income in 2016 was approximately \$143,281. Federal law and regulations required taxpayers with gross income of \$13,350 in 2016 to file a federal income tax return. My gross income in 2016 exceeded the federal filing threshold, and I was required by law to file an income tax return with the Internal Revenue Service by on or about April 18, 2017. Although I knew that I was required to file an income tax return, I willfully elected not to file a federal income tax return for 2016.

- (5) I, RICHARD KESSLER, admit that my total or gross income in 2017 was approximately \$29,998. Federal law and regulations required taxpayers with gross income of \$13,400 in 2017 to file a federal income tax return. My gross

income in 2017 exceeded the federal filing threshold, and I was required by law to file an income tax return with the Internal Revenue Service by on or about April 17, 2018. Although I knew that I was required to file an income tax return, I willfully elected not to file a federal income tax return for 2017.

- (6) I, RICHARD KESSLER, admit that I did not pay federal income tax for 2014, 2015, 2016 and 2017. The Internal Revenue Service has determined that my failure to file timely returns and pay my federal income taxes resulted in an aggregate tax liability of \$82,627 for those four years (not including any penalties or interest).

#### **RECOMMENDATIONS**

8. Pursuant to Rule 11(c)(1)(B), the United States and the Defendant recommend as follows:

- a. While the parties anticipate that the Defendant's Offense Level under the United States Sentencing Guidelines (U.S.S.G.) will be assessed under §§ 2B1.1 and 2T1.1, the parties have not entered into any agreement or stipulation regarding the calculation of the Defendant's Offense Level or as to the application of Specific Offense Characteristics and adjustments authorized by the Sentencing Guidelines. Each party remains free to present evidence and argument regarding the calculation of the Defendant's Offense Level.
- b. As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to USSG § 3E1.1(a), so

long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a reduction of two levels from the base offense level as calculated under the sentencing guidelines, and if applicable, a reduction of an additional offense level pursuant to USSG § 3E1.1(b). Further, the United States is free to withdraw this recommendation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing. Such conduct would include committing additional crimes, failing to appear in Court as required, and/or failing to obey any conditions of release that the Court may set.

- c. The Defendant understands that the above recommendations are not binding on the Court and that whether the Court accepts these recommendations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Further, the Defendant understands that the Court may choose to vary from the advisory guideline sentence. If the Court does not accept any one or more of the above recommendations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court varies from the advisory guideline range, the Defendant will not seek to withdraw the Defendant's plea of guilty. In other words, regardless of any of the parties' recommendations, the Defendant's final sentence is solely within the discretion of the Court.

9. Apart from the recommendations set forth in this plea agreement, the United States and the Defendant reserve their rights to assert any position or argument with respect to the sentence to be imposed, including but not limited to the applicability of particular sentencing

guidelines, adjustments under the guidelines, departures or variances from the guidelines, and the application of factors in 18 U.S.C. § 3553(a).

10. Regardless of any other provision in this agreement, the United States reserves the right to provide to the United States Pretrial Services and Probation Office and to the Court any information the United States believes may be helpful to the Court, including but not limited to information about the recommendations contained in this agreement and any relevant conduct under USSG § 1B1.3.

#### **DEFENDANT'S ADDITIONAL AGREEMENT**

11. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

12. The Defendant agrees that any financial records and information provided by the Defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

13. The Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

14. By signing this plea agreement, the defendant waives the right to withdraw the defendant's plea of guilty pursuant to Federal Rule of Criminal Procedure 11(d) unless (1) the court rejects the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(5) or (2) the defendant can show a fair and just reason as those terms are used in Rule 11(d)(2)(B) for requesting the withdrawal. Furthermore, defendant understands that if the court rejects the plea agreement, whether or not defendant withdraws the guilty plea, the United States is relieved of any obligation it had under the agreement and defendant shall be subject to prosecution for any federal, state, or local crime(s) which this agreement otherwise anticipated would be dismissed or not prosecuted.

#### **RESTITUTION**

15. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A.

16. The Defendant agrees and acknowledges that, as part of the Defendant's sentence, the Court is not limited to ordering restitution only for the amount involved in the particular offense or offenses to which the Defendant is entering a plea of guilty, but may and should order restitution resulting from all of the Defendant's criminal conduct related to this case.

17. No later than July 1 of each year after sentencing, until restitution is paid in full, the Defendant shall provide the Asset Recovery Unit, United States Attorney's Office, P.O. Box 607, Albuquerque, New Mexico 87103, (1) a completed and signed financial statement provided to the Defendant by the United States Attorney's Office and/or the United States Probation Office and (2) a copy of the Defendant's most recent tax returns.

**FORFEITURE**

18. The Defendant agrees to forfeit, and hereby forfeits, whatever interest the Defendant may have in any asset derived from or used in the commission of the offenses charged in Counts 1 and 2 of the Information in this case. The Defendant agrees to cooperate fully in helping the United States (a) to locate and identify any such assets and (b) to the extent possible, to obtain possession and/or ownership of all or part of any such assets. The Defendant further agrees to cooperate fully in helping the United States locate, identify, and obtain possession and/or ownership of any other assets about which the Defendant may have knowledge that were derived from or used in the commission of offenses committed by other persons.

19. The Defendant agrees to the imposition of a money judgment against the Defendant in the amount of \$121,276, representing the money that defendant fraudulently obtained from investors C.K., F.B., V.C. and L.J. in the course of the fraudulent scheme described in Counts 1 and 2 of the information, this amount being due at the time of the Defendant's sentencing.

20. The Defendant agrees to fully assist the United States in the forfeiture of the above-described property and to take whatever steps are necessary to pass clear title to the United States, including but not limited to execution of any documents necessary to transfer the Defendant's interest in the above-described property to the United States.

21. The Defendant agrees to waive the right to notice of any forfeiture proceeding involving the above-described property.

22. The Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of the above-described property. The Defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses to the forfeiture of said property in any proceeding.

The Defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of said property by the United States or any State or its subdivisions.

### **IMMIGRATION CONSEQUENCES AND REMOVAL**

23. The Defendant recognizes that pleading guilty may have consequences with respect to the Defendant's immigration status if the Defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including offenses to which the Defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and the Defendant understands that no one, including the Defendant's attorney or the district court, can predict to a certainty the effect of the Defendant's conviction on the Defendant's immigration status. The Defendant nevertheless affirms that the Defendant wants to plead guilty regardless of any immigration consequences that the Defendant's plea may entail, even if the consequence is the Defendant's automatic removal from the United States.

### **WAIVER OF APPEAL RIGHTS**

24. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence, including any fine, within the statutory maximum authorized by law, as well as any order of restitution entered by the Court. The Defendant also waives the right to appeal any sentence



imposed below or within the Guideline range upon a revocation of supervised release in this cause number. The Defendant also waives the right to appeal the denial of any motion filed under 18 U.S.C. § 3582(c)(1)(A) where such denial rests in any part upon the court's determination that "extraordinary and compelling reasons" for a sentence reduction are lacking or that a sentence reduction is not warranted under the factors set forth in 18 U.S.C. § 3553(a). In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) and any sentence, including any fine, pursuant to 28 U.S.C. §§ 2241 or 2255, or any other extraordinary writ, except on the issue of defense counsel's ineffective assistance.

#### **GOVERNMENT'S ADDITIONAL AGREEMENT**

25. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. Following sentencing, the United States will move to dismiss the Indictment;
- b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the Indictment and Information.

26. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

#### **VOLUNTARY PLEA**

27. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set

forth in this agreement and any addenda). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

#### **VIOLATION OF PLEA AGREEMENT**

28. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

#### **SPECIAL ASSESSMENT**

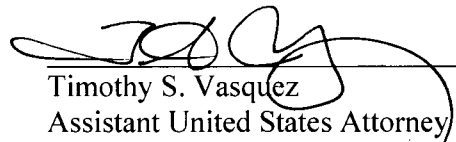
29. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$800 in payment of the special penalty assessments described above.

#### **ENTIRETY OF AGREEMENT**

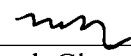

30. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. This agreement is effective upon signature by the Defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this 18<sup>th</sup> day of April 2022.


Fred Federici  
United States Attorney

  
\_\_\_\_\_  
Timothy S. Vasquez  
Assistant United States Attorney  
Post Office Box 607  
Albuquerque, New Mexico 87102  
(505) 346-7274

I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of my client's rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. In addition, I have explained to my client the elements to each offense to which she/he is pleading guilty. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

   
\_\_\_\_\_  
Buck Glanz  
Attorney for the Defendant

I have carefully discussed every part of this agreement with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement.

  
\_\_\_\_\_  
RICHARD KESSLER  
Defendant