UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA	)	
	)	
v.	)	**No. 1:23-cr-15-JL**
	)	
HEATH GAUTHIER	)	

PLEA AGREEMENT

Pursuant to Rules 11(c)(1)(A) and (C) of the Federal Rules of Criminal Procedure, the United States of America by its attorney, Jane E. Young, United States Attorney for the District of New Hampshire, and the defendant, Heath Gauthier, and the defendant's attorney, Dorothy Graham, Esquire, enter into the following Plea Agreement:

1. The Plea and The Offense.

The defendant agrees to plead guilty to Counts 2, 4, 7, and 10 of the Superseding Indictment that charges him with wire fraud and attempted wire fraud, in violation of 18 U.S.C. § 1343 & 1349, aggravated identity theft, in violation of 18 U.S.C. § 1028A, and possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B) & (b)(2).

In exchange for the defendant's guilty plea, the United States agrees to the sentencing stipulations identified in Section 6 of this agreement. The United States also agrees to move to dismiss the remaining counts of the Superseding Indictment when the defendant is sentenced.

2. The Statute and Elements of the Offense.

Title 18, United States Code, Section 1343 provides, in pertinent part:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any

> writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1343.

The defendant understands that the offense has the following elements, each of which the United States would be required to prove beyond a reasonable doubt at trial:

First, that there was a scheme, substantially as charged in the indictment, to obtain money or property by means of false or fraudulent pretenses;

Second, that the scheme to obtain money or property by means of false or fraudulent pretenses involved a false statement, assertion, half-truth or knowing concealment concerning a material fact or matter;

Third, that the defendant knowingly and willfully participated in this scheme with the intent to defraud; and

Fourth, that for the purpose of executing the scheme or in furtherance of the scheme, the defendant caused an interstate or foreign wire communication to be used, or it was reasonably foreseeable that for the purpose of executing the scheme or in furtherance of the scheme, an interstate or foreign wire communication would be used, on or about the date alleged.

See First Circuit Pattern Jury Instructions, 2022 Revisions, Instruction 4.18.1343, available at https://www.med.uscourts.gov/sites/med/files/crpjilinks.pdf.

Title 18, United States Code, Section 1349 provides that:

> Any person who attempts . . . to commit [wire fraud] shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

18 U.S.C. § 1349.

The defendant understands that the offense has the following elements, each of which the United States would be required to prove beyond a reasonable doubt at trial:

First, that the defendant intended to commit the crime of wire fraud; and

Second, that the defendant engaged in a purposeful act that, under the

> circumstances as he believed them to be, amounted to a substantial step toward the commission of that crime and strongly corroborated his criminal intent.

See 18 U.S.C. § 1349; First Circuit Pattern Jury Instructions, 2022 Revisions, Instruction 4.18.00, available at https://www.med.uscourts.gov/sites/med/files/crpjilinks.pdf.

Title 18, United States Code, Section 1028A provides, in pertinent part:

> Whoever, during and in relation to any felony violation enumerated in subsection (c) [including Wire Fraud], knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

18 U.S.C. § 1028A(a)(1).

The defendant understands that the offense has the following elements, each of which the United States would be required to prove beyond a reasonable doubt at trial:

> First, the defendant committed the felony violation of wire fraud.
>
> Second, during and in relation to the felony violation of wire fraud, the defendant knowingly transferred, possessed, or used a means of identification.
>
> Third, the defendant did so without lawful authority.
>
> Fourth, the means of identification belonged to another person.
>
> Fifth, the defendant knew that the means of identification belonged to another person.

"[T]he word 'person' in the phrase 'means of identification of another person' includes persons deceased." *United States v. Jimenez*, 507 F.3d 13, 22 (1st Cir. 2007) (quoting 18 U.S.C. § 1028A(a)(1)).

Criminal Jury Instructions For The District Courts Of The First Circuit § 4.18.1028A, updated Mar. 3, 2017, *available at* http://www.med.uscourts.gov/pdf/ crpjilinks.pdf; Pattern Criminal Jury Instructions Of The Seventh Circuit, at 331, Instruction for 18 U.S.C. § 1028A, *available at* http://www.med.uscourts.gov/pdf/crpjilinks.pdf.

Title 18, United States Code, Section 2252 provides, in pertinent part:

> Any person who . . . knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any

> other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer . . . shall be punished as provided in subsection (b).

18 U.S.C. § 2252(a)(5)(B).

The defendant understands that the offense has the following elements, each of which the United States would be required to prove beyond a reasonable doubt at trial:

> First, that the defendant knowingly possessed an item;
>
> Second, that the item contained at least one image of child pornography;
>
> Third, that the defendant knew that the item contained an image of child pornography; and
>
> Fourth, that the image of child pornography had moved in interstate or foreign commerce or was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce.

"[T]he interstate commerce element is satisfied by the copying of child pornography onto a [hard] drive that had traveled interstate." *United States v. Joubert*, 778 F.3d 247, 255–56 (1st Cir. 2015) (citing *United States v. Burdulis*, 753 F.3d 255, 262 (1st Cir.2014) ("[W]hen the file containing the image is copied onto a disk, the original is left intact and a new copy of the image is created, so the process 'produces' an image." (citation omitted)).

First Circuit Pattern Criminal Jury Instruction 4.18.2252, available at https://www.med.uscourts.gov/sites/med/files/crpjilinks.pdf

3. Offense Conduct.

The defendant stipulates and agrees that if this case proceeded to trial, the government would introduce evidence of the following facts, which would prove the elements of the offense beyond a reasonable doubt:

The CARES Act Fraud Scheme

In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security

("CARES") Act. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses through the Paycheck Protection Program ("PPP"). A participating lender would process the PPP loan application. If the application was approved, the participating lender funded the PPP loan using its own monies, which were fully guaranteed by the Small Business Administration ("SBA").

Itria Ventures LLC, Harvest Small Business Finance LLC, Fountainhead Small Business Finance LLC, and ReadyCap Lending LLC are non-bank lenders located in states other than New Hampshire. WebBank, Cross River Bank, Northeast Bank, and Customers Bank are FDIC-insured banks headquartered in states other than New Hampshire. Itria Ventures LLC, Harvest Small Business Finance LLC, Fountainhead Small Business Finance LLC, ReadyCap Lending LLC, WebBank, Cross River Bank, Northeast Bank, and Customers Bank (the "Lenders") participated in the PPP as lenders to small businesses.

Another source of relief provided by the CARES Act was the Economic Injury Disaster Loan ("EIDL") program. These loans were intended for small businesses experiencing substantial financial disruptions due to the COVID-19 pandemic. In addition, the CARES Act authorized the SBA to issue advances of up to $10,000 to small businesses, known as Economic Injury Disaster Grants (EIDGs). The advances did not need to be repaid.

PPP loan applications were received by Lenders through server locations located outside of New Hampshire. EIDL applications were received by a cloud-based platform through a server located in Des Moines, Iowa. Therefore, PPP and EIDL applications made from New Hampshire involved an interstate wire.

To obtain a PPP loan, the applicant was required to state the business's average monthly payroll expenses and number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. Similarly, to obtain an EIDL and/or EIDG, the applicant was required to provide information about its operations, such as the number of employees, the entity's gross business revenues, and cost of goods sold in the 12 months prior to January 31, 2020. The amount of the loan, if approved, was determined based, in part, on the information provided concerning the number of employees, gross revenue, and cost of goods.

Between in or around February 2020, and continuing through in or around March 2021, the defendant applied for approximately 10 PPP loans from the Lenders. The total requested loan amount of these PPP loans was approximately $990,000. During that time, the defendant also applied for four EIDLs from the SBA. The total requested loan amount of these EIDLs was approximately $130,000. The defendant physically or electronically signed each PPP and EIDL application form and submitted them over the internet.

In each application, the defendant knowingly and willfully made false and fraudulent representations with the intent to defraud the Lenders and the SBA. For example, the defendant submitted applications falsely listing himself as a sole proprietor of a business or in the names of fictitious companies. In support of the applications, the defendant submitted municipal records, bank records, payroll records, and IRS records, all of which were false or digitally altered. The defendant also used the identities of more than 10 deceased persons to support several of his applications. In some applications, the defendant applied in the names of deceased persons, using their real names and social security numbers; in others he listed deceased persons as "employees" in false tax and payroll records for his fake companies.

Relying on his false and fraudulent applications, two lenders wired the defendant approximately $186,007 in PPP funds and the SBA wired the defendant approximately $10,500 in EIDL/EIDG funds. For example, as charged in Count 2 of the Superseding Indictment, on or about February 9, 2021, the defendant submitted a false and fraudulent PPP application to Harvest Small Business Finance LLC, requesting funds for a fake business, Sellingham Farm, and listing 10 deceased persons as employees in forged supporting documents. Relying on this false application, the lender wired the defendant $116,007 in CARES Act funds. And, as charged in Counts 4 and 7 of the Superseding Indictment, on or about August 4, 2020, the defendant submitted a false and fraudulent PPP application to Itria Ventures LLC in the name and social security number of a real deceased person, DP-1. The defendant sought approximately $99,000 however the lender did not approve the application.

Possession of Child Pornography

On February 14, 2023, law enforcement obtained a warrant to seize and search the defendant's electronic devices for evidence related to his wire fraud scheme. On or about May 17, 2023, during a review of the defendant's electronic devices pursuant that warrant, law enforcement found what appeared to be child sexual abuse material (CSAM), also known as child pornography. The images were in a folder with a file path that began "My Book\Heath's\ . . . ." Law enforcement then obtained a warrant to search for and seize evidence related to CSAM offenses. After obtaining the second warrant, law enforcement found approximately 1,536 files that contained CSAM on two of the defendant's devices, a Toshiba Laptop and a Western Digital Hard Drive, both of which were manufactured, in whole or in part, outside the State of New Hampshire. Twelve of these files are videos or a series of still images captured from videos.

4. Penalties, Special Assessment and Restitution.

The defendant understands that the penalties for the offense are:

A. For Counts 2 and 4, a maximum prison term of 20 years (18 U.S.C. § 1343); for Count 7, a 2 year term of imprisonment consecutive to any other term of imprisonment; for Count 10, a maximum term of imprisonment of 10 years, but if any image of child pornography involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, the penalty shall be not more than 20 years, or if the defendant has a prior conviction under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or an offense in any of the categories of offenses enumerated in 18 U.S.C. § 2252A(b)(2), the penalty shall be not less than 10 years and not more than 20 years imprisonment (18 U.S.C. § 2252A(b)(2));

B. For Counts 7 and 10, a maximum fine of $250,000 (18 U.S.C. § 3571); for Counts 2 and 4, a maximum fine of $250,000 or not more than the greater of twice the gross gain or twice the gross loss, whichever is greater (18 U.S.C. § 3571);

C. For Counts 2 and 4, a term of supervised release of not more than 3 years (18 U.S.C. § 3583); for Count 7, a term of supervised release of not more than 1 year (18 U.S.C. § 3583); for Count 10, a term of supervised release of not less than 5 years and up to life (18 U.S.C. § 3583(k)). The defendant understands that the defendant's failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring the defendant to serve in prison all or part of the term of supervised release, with no credit for time already spent on supervised release;

D. A mandatory special assessment of $400, $100 for each count of conviction, due at or before the time of sentencing (18 U.S.C. § 3013(a)(2)(A));

E. In addition to the other penalties provided by law, the Court may order the defendant to pay restitution to the victim(s) of the offense (18 U.S.C. § 3663 or § 3663A). As to victims of offenses under 18 U.S.C. § 2252A, the Court shall order the defendant to pay restitution (18 U.S.C. § 2259).

To facilitate the payment and collection of any restitution that may be ordered, the defendant agrees that, upon request, he will provide the United States with a financial disclosure statement and supporting financial documentation.

The defendant further agrees that, if restitution is ordered, it shall be due and payable immediately after the judgment is entered and is subject to immediate enforcement, in full, by the United States. If the Court imposes a schedule of payments, the defendant agrees that the schedule of payments is a schedule of the minimum payment due, and that the payment schedule does not prohibit or limit the methods by which the United States may immediately enforce the judgment in full, including, but not limited to, the Treasury Offset Program;

F. An additional mandatory assessment of $5,000 (18 U.S.C. § 3014(a)); and

G. For possession of child pornography, an additional assessment of not more than $17,000. (18 U.S.C. § 2259A(a)(1)).

5. Sentencing and Application of the Sentencing Guidelines.

The defendant understands that the Sentencing Reform Act of 1984 applies in this case and that the Court is required to consider the United States Sentencing Guidelines as advisory guidelines. The defendant further understands that he has no right to withdraw from this Plea Agreement if the applicable advisory guideline range or his sentence is other than he anticipated.

The defendant also understands that the United States and the United States Probation Office shall:

A. Advise the Court of any additional, relevant facts that are presently known or may subsequently come to their attention;

B. Respond to questions from the Court;

C. Correct any inaccuracies in the pre-sentence report;

D. Respond to any statements made by him or his counsel to a probation officer or to the Court.

The defendant understands that the United States and the Probation Office may address the Court with respect to an appropriate sentence to be imposed in this case.

The defendant acknowledges that any estimate of the probable sentence or the probable sentencing range under the advisory Sentencing Guidelines that he may have received from any source is only a prediction and not a promise as to the actual sentencing range under the advisory

Sentencing Guidelines that the Court will adopt.

6. Sentencing Stipulations and Agreements.

Pursuant to Fed. R. Crim. 11(c)(1)(C), the United States and the defendant stipulate and agree to the following:

(a) 145 months' imprisonment is an appropriate disposition of this case;

(b) Restitution of at least $196,507.00 is due and owing to the SBA;

(c) Pursuant to 18 U.S.C. § 2259(b)(2)(B), restitution of *at least* $3,000 is due and owing to the following victims, each of whom has requested restitution with respect to Count 10: "Kauzie" (RapJerseys series); "Jack" (Rap72 series);[1]

(d) Pursuant to 18 U.S.C. § 3663(a)(3), the parties agree that the Court may consider all relevant conduct for purposes of determining who is a victim entitled to restitution in this case and that victims of dismissed and/or uncharged counts shall be entitled to restitution.

The parties intend the above stipulations to be "binding" under Fed. R. Crim. P. 11(c)(1)(C). By using the word binding the parties mean that if the Court will not accept the plea agreement under Fed. R. Crim. P. 11(c)(3)(A), the plea agreement is null and void and the defendant will be allowed the opportunity to withdraw his guilty pleas.

The parties are free to make recommendations with respect to the terms of imprisonment,

[1] This provision includes only the victims from whom a restitution request has been received as of the date of this agreement. Additional requests received after the date of this agreement will be provided to Probation for inclusion in the PSR and addressed at sentencing or, if appropriate, at a hearing under 18 U.S.C. § 3664(d)(5).

fines, conditions of probation or supervised release, and any other penalties, requirements, and conditions of sentencing as each party may deem lawful and appropriate, unless such recommendations are inconsistent with the terms of this Plea Agreement.

7. Acceptance of Responsibility.

The United States agrees that it will not oppose an appropriate reduction in the defendant's adjusted offense level, under the advisory Sentencing Guidelines, based upon the defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for the offense. The United States, however, may oppose any adjustment for acceptance of responsibility if the defendant:

A. Fails to admit a complete factual basis for the plea at the time he is sentenced or at any other time;

B. Challenges the United States' offer of proof at any time after the plea is entered;

C. Denies involvement in the offense;

D. Gives conflicting statements about that involvement or is untruthful with the Court, the United States or the Probation Office;

E. Fails to give complete and accurate information about his financial status to the Probation Office;

F. Obstructs or attempts to obstruct justice, prior to sentencing;

G. Has engaged in conduct prior to signing this Plea Agreement which reasonably could be viewed as obstruction or an attempt to obstruct justice, and has failed to fully disclose such conduct to the United States prior to signing this Plea Agreement;

H. Fails to appear in court as required;

I. After signing this Plea Agreement, engages in additional criminal conduct; or

J. Attempts to withdraw his guilty plea.

The defendant understands and agrees that he may not withdraw his guilty plea if, for any of the reasons listed above, the United States does not recommend that he receive a reduction in his sentence for acceptance of responsibility.

The defendant also understands and agrees that the Court is not required to reduce the offense level if it finds that he has not accepted responsibility.

If the defendant's offense level is sixteen or greater, and he has assisted the United States in the investigation or prosecution of his own misconduct by timely notifying the United States of his intention to enter a plea of guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources efficiently, the United States will move, at or before sentencing, to decrease the defendant's base offense level by an additional one level pursuant to U.S.S.G. § 3E1.1(b).

8. Waiver of Trial Rights and Consequences of Plea.

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him. The defendant also understands that he has the right:

A. To plead not guilty or to maintain that plea if it has already been made;

B. To be tried by a jury and, at that trial, to the assistance of counsel;

C. To confront and cross-examine witnesses;

D. Not to be compelled to provide testimony that may incriminate him; and

E. To compulsory process for the attendance of witnesses to testify in his defense.

The defendant understands and agrees that by pleading guilty he waives and gives up the foregoing rights and that upon the Court's acceptance of his guilty plea, he will not be entitled to a trial.

The defendant understands that if he pleads guilty, the Court may ask him questions about the offense, and if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers will be used against him in a prosecution for perjury or making false statements.

9. Acknowledgment of Guilt; Voluntariness of Plea.

The defendant understands and acknowledges that he:

A. Is entering into this Plea Agreement and is pleading guilty freely and voluntarily because he is guilty;

B. Is entering into this Plea Agreement without reliance upon any promise or benefit of any kind except as set forth in this Plea Agreement or revealed to the Court;

C. Is entering into this Plea Agreement without threats, force, intimidation, or coercion;

D. Understands the nature of the offense to which he is pleading guilty, including the penalties provided by law; and

E. Is completely satisfied with the representation and advice received from his undersigned attorney.

10. Scope of Agreement.

The defendant acknowledges and understands that this Plea Agreement binds only the undersigned parties and cannot bind any other non-party federal, state or local authority. The defendant also acknowledges that no representations have been made to him about any civil or administrative consequences that may result from his guilty plea. The defendant understands such matters are solely within the discretion of the specific non-party government agency involved. The defendant further acknowledges that this Plea Agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving the defendant.

11. Collateral Consequences.

The defendant understands that as a consequence of his guilty plea he will be adjudicated guilty and may thereby be deprived of certain federal benefits and certain rights, such as the right to vote, to hold public office, to serve on a jury, or to possess firearms.

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense will likely result in him being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible. The defendant also understands that if he is a naturalized citizen, his guilty plea may result in ending his naturalization, which would likely subject him to immigration proceedings and possible removal from the United States. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

The defendant further understands that by pleading guilty, the defendant will be required to register as a sex offender upon his release from prison as a condition of supervised release pursuant to 18 U.S.C. § 3583(d). The defendant also understands that independent of supervised release, he will be subject to federal and state sex offender registration requirements. The defendant understands that he shall keep his registration current, shall notify the state sex offender registration agency or agencies of any changes to defendant's name, place of residence, employment, or student status, or other relevant information. The defendant shall comply with requirements to periodically verify in person his sex offender registration information. The defendant understands that he will be subject to possible federal and state penalties for failure to comply with any such sex offender registration requirements. The defendant further understands that, under 18 U.S.C. § 4042(c), notice will be provided to certain law enforcement agencies upon his release from confinement following supervision.

12. Satisfaction of Federal Criminal Liability; Breach.

The defendant's guilty plea, if accepted by the Court, will satisfy his federal criminal liability in the District of New Hampshire arising from his participation in the conduct that forms the basis of the Superseding Indictment in this case.

The defendant understands and agrees that, if after entering this Agreement, he fails specifically to perform or fulfill completely each one of his obligations under this Agreement, fails to appear for sentencing, or engages in any criminal activity prior to sentencing, he will have breached this Agreement.

If the United States, in its sole discretion, and acting in good faith, determines that the defendant committed or attempted to commit any further crimes, failed to appear for sentencing, or has otherwise violated any provision of this Agreement, the United States will be released from its obligations under this Agreement, including, but not limited to, any agreement it made to dismiss charges, forbear prosecution of other crimes, or recommend a specific sentence or a sentence within a specified range. The defendant also understands that he may not use his breach of this Agreement as a reason to withdraw his guilty plea or as a basis to be released from his guilty plea.

13 Forfeiture

The defendant agrees forfeit to the United States his interest, if any, in property subject to forfeiture as property facilitating or involved in the possession of child pornography crime to which he is pleading, pursuant to 18 U.S.C. § 2253, including: (A) One Western Digital 1 GB My Book 1110 external drive; SN: WCAV5J746167; (B) One Toshiba Laptop Computer Satellite P75-A7200, SN: 8D040167C; (C) One Motorola Edge Plus 2022 cell phone IMEI-356439690571575, and (D) One SD Card ("Forfeitable Property").

The defendant further agrees:

A. Not to contest any administrative, civil or criminal forfeiture proceedings commenced against the Forfeitable Property. Defendant waives the 60- or 90-day notice requirement under 18 U.S.C. § 983 for administrative forfeiture. Defendant shall withdraw any and all claims and/or petitions for remission for all or part of the Forfeitable Property filed personally or on his behalf by any other individual or entity, and further agrees to waive any right he may have to seek remission or mitigation of the forfeiture of the Forfeitable Property.

B. That none of the forfeitures set forth in this section shall be deemed to satisfy or offset any fine, restitution, cost of imprisonment, or other penalty imposed upon the defendant, nor shall the forfeitures be used to offset the defendant's tax liability, or any other debt owed by the defendant to the United States.

C. To waive all constitutional, statutory, and any other challenges in any manner, including, without limitation, by direct appeal and/or habeas corpus, to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including the following: (i) the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment to the U.S. Constitution; (ii) the Court=s failure to comply with any and all requirements of Fed. R. Crim. P. 11(b)(1)(J) at the change of plea hearing; and, (iii) failure to comply with any and all requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant further acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case.

D. To waive and release all claims he may have to any property seized by the United States, or any state or local law enforcement agency and turned over to the United States, during the investigation and prosecution of this case, whether forfeited or not.

E. To hold the United States, its agents, and employees, and any state or local law enforcement agency participating in the investigation and prosecution of this case, harmless from any claims whatsoever in connection with the seizure and forfeiture, as well as the seizure, detention and return of any property in connection with the investigation and prosecution of this case.

The defendant acknowledges that the properties to be forfeited under this section are subject to forfeiture as property involved in or used to facilitate the commission of the illegal conduct.

14. Waivers.

A. Appeal.

The defendant understands that he has the right to challenge his guilty plea and/or sentence on direct appeal. By entering into this Plea Agreement the defendant knowingly and voluntarily waives his right to challenge on direct appeal:

1. His guilty plea and any other aspect of his conviction, including, but not limited to, adverse rulings on pretrial suppression motion(s) or any other adverse disposition of pretrial motions or issues; or claims challenging the constitutionality of the statute of conviction; and

2. The sentence imposed by the Court if it is consistent with or lower than the stipulated sentence or the stipulated sentencing range specified in Section 6 of this agreement.

The defendant's waiver of his rights does not operate to waive an appeal based upon new legal principles enunciated in Supreme Court or First Circuit case law after the date of this Plea Agreement that have retroactive effect; or on the ground of ineffective assistance of counsel.

B. Collateral Review

The defendant understands that he may have the right to challenge his guilty plea and/or sentence on collateral review, e.g., a motion pursuant to 28 U.S.C. §§ 2241 or 2255. By entering into this Plea Agreement, the defendant knowingly and voluntarily waives his right to collaterally challenge:

1. His guilty plea, except as provided below, and any other aspect of his conviction, including, but not limited to, adverse rulings on pretrial suppression motion(s) or any other adverse disposition of pretrial motions or issues, or claims challenging the constitutionality of the statute of conviction; and

2. The sentence imposed by the Court if it is consistent with or lower than the stipulated sentence or the stipulated sentencing range specified in Section 6 of this agreement.

The defendant's waiver of his right to collateral review does not operate to waive a collateral challenge to his guilty plea on the ground that it was involuntary or unknowing, or on the ground of ineffective assistance of counsel. The defendant's waiver of his right to collateral review also does not operate to waive a collateral challenge based on new legal principles enunciated by in Supreme Court or First Circuit case law decided after the date of this Plea Agreement that have retroactive effect.

C. Freedom of Information and Privacy Acts

The defendant hereby waives all rights, whether asserted directly or through a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of the case(s) underlying this Plea Agreement, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. §552, or the Privacy Act of 1974, 5 U.S.C. §522a.

D. Appeal by the Government

Nothing in this Plea Agreement shall operate to waive the rights or obligations of the Government pursuant 18 U.S.C. § 3742(b) to pursue an appeal as authorized by law.

15. <u>No Other Promises</u>.

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement or revealed to the Court, and none will be entered into unless set forth in writing, signed by all parties, and submitted to the Court.

16. <u>Final Binding Agreement</u>.

None of the terms of this Plea Agreement shall be binding on the United States until this Plea Agreement is signed by the defendant and the defendant's attorney and until it is signed by the United States Attorney for the District of New Hampshire, or an Assistant United States

Attorney.

17. Agreement Provisions Not Severable.

The United States and the defendant understand and agree that if any provision of this Plea Agreement is deemed invalid or unenforceable, then the entire Plea Agreement is null and void and no part of it may be enforced.

JANE E. YOUNG
United States Attorney

Date: 2.14.2024

By:____________________
Matthew T. Hunter
Kasey A. Weiland
Assistant United States Attorneys
53 Pleasant St., 4th Floor
Concord, NH 03301

The defendant, Heath Gauthier, certifies that he has read this 21-page Plea Agreement and that he fully understands and accepts its terms.

Date: 2-9-24

____
Heath Gauthier, Defendant

I have read and explained this 21-page Plea Agreement to the defendant, and he has advised me that he understands and accepts its terms.

Date: 2-9-24

____
Dorothy Graham, Esquire
Attorney for Heath Gauthier