



United States Department of Justice

*United States Attorney
Southern District of West Virginia*

*Robert C. Byrd United States Courthouse
300 Virginia Street, East
Suite 4000
Charleston, WV 25301*

*1-800-659-8726
304-345-2200
FAX: 304-347-5104*

July 18, 2022

Rhett Johnson, Esq.
Assistant Federal Public Defender
300 Virginia Street E., Room 3400
Charleston, WV 25301



Re: United States v. Malik Breckenridge
Criminal No. 2:22-cr-00084 (USDC SDWV)

Dear Mr. Johnson:

This will confirm our conversations with regard to your client, Malik Breckenridge, (hereinafter "Mr. Breckenridge"). As a result of these conversations, it is agreed by and between the United States and Mr. Breckenridge as follows:

1. **PENDING CHARGES.** Mr. Breckenridge is charged in two counts of a two-count indictment as follows:

(a) Count One and Count Two charge Mr. Breckenridge with a violation of 18 U.S.C. § 1343 (wire fraud).

2. **RESOLUTION OF CHARGES.** Mr. Breckenridge will plead guilty to Count One of said indictment, which charges a violation of 18 U.S.C. § 1343 (Wire Fraud). Following final disposition, the United States will move to dismiss Count Two in Criminal No. 2:22-cr-00084.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Breckenridge will be exposed by virtue of this guilty plea is as follows:

- (a) Imprisonment for a period of 20 years;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of 3 years;

MB

Defendant's
Initials

Rhett Johnson, Esq.
June 29, 2022
Page 2

Re: Malik Breckenridge

- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) An order of restitution pursuant to 18 U.S.C. §§ 3663A and 3664, or as otherwise set forth in this plea agreement.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Breckenridge will tender a check or money order to the Clerk of the United States District Court for \$100, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Breckenridge will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Breckenridge fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Breckenridge.

5. **RESTITUTION.** Pursuant to 18 U.S.C. §3663A, Mr. Breckenridge agrees that he owes restitution in the amount of \$41,666.00 and agrees to pay such restitution, with interest as allowed by law, to the fullest extent financially feasible. In aid of restitution, Mr. Breckenridge further agrees as follows:

- (a) Mr. Breckenridge agrees to fully assist the United States in identifying and locating any assets to be applied toward restitution and to give signed, sworn statements and testimony concerning assets upon request of the United States.
- (b) Mr. Breckenridge will fully complete and execute, under oath, a Financial Statement and a Release of Financial Information on forms supplied by the United States and will return these completed forms to counsel for the United States within seven calendar days from the date of the signing of this plea agreement.
- (c) Mr. Breckenridge agrees not to dispose of, transfer or otherwise encumber any real or personal property which he currently owns or in which he holds an interest, including:
- (d) Mr. Breckenridge agrees to fully cooperate with the United States in the liquidation of assets to be applied towards restitution, to execute any and all documents necessary to transfer title of any assets available to satisfy restitution, to release any and all right, title and interest he may have in and to such property, and waives his right to exemptions under the Federal Debt Collection Procedures Act upon levy against and the sale of any such property.

MB

Defendant's
Initials

Rhett Johnson, Esq.
June 29, 2022
Page 3

Re: Malik Breckenridge

6. **FORFEITURE.** Mr. Breckenridge hereby agrees as follows:
- (a) To forfeit to the United States any and all property in Mr. Breckenridge's possession or under his control which constitutes proceeds of or is derived from the proceeds of the offense to which Mr. Breckenridge is agreeing to plead guilty, and is set forth in this information, namely a violation of 18 U.S.C. § 1343. Mr. Breckenridge further agrees not to contest a forfeiture money judgment in the amount of \$41,666.00, which amount constitutes the proceeds of the violation set forth in the attached information;
 - (b) To assist the United States and its agents in identifying all such property, regardless of its location and the manner in which it is titled. Any such identified property deemed forfeitable by the United States will then be forfeited, pursuant to 18 U.S.C. §§ 981, 982 or 28 U.S.C. § 2461, in either an administrative or judicial forfeiture action;
 - (c) To fully complete and execute, under oath, a Financial Affidavit in a form supplied by the United States and to return to counsel for the United States the completed Affidavit within seven calendar days from the date of signing this plea agreement;
 - (d) To provide sworn testimony and to execute any documents deemed necessary by the United States to effectuate the forfeiture and to transfer title to the said property to the United States; and
 - (e) To waive any defenses to this criminal action, or to any related administrative or judicial forfeiture action, based in whole or in part on the Excessive Fines Clause of the Eighth Amendment to the Constitution, or the holding or principles set forth in United States v. Alexander, 509 U.S. 544 (1993); United States v. Bajakajian, 524 U.S. 321 (1998); United States v. Austin, 509 U.S. 602 (1993); and their progeny.

7. **PAYMENT OF MONETARY PENALTIES.** Mr. Breckenridge authorizes the Financial Litigation Program in the United States Attorney's Office to obtain a credit report from any major credit reporting agency prior to sentencing in order to assess his financial condition for sentencing purposes. Mr. Breckenridge agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Breckenridge further agrees

MB

Defendant's
Initials

Rhett Johnson, Esq.
June 29, 2022
Page 4

Re: Malik Breckenridge

not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

Mr. Breckenridge authorizes the United States, through the Financial Litigation Program, to submit any unpaid criminal monetary penalty to the United States Treasury for offset in accordance with the Treasury Offset Program, regardless of the defendant's payment status or history at that time.

In addition to any payment ordered by the Court, Mr. Breckenridge shall pay all monies received from any source other than earned income, including but not limited to, lottery winnings, gambling proceeds, judgments, inheritances, and tax refunds, toward the court ordered restitution or fine.

Mr. Breckenridge agrees that if he retains counsel or has appointed counsel in response to the United States' efforts to collect any monetary penalty, he shall immediately notify the United States Attorney's Office, Attention: Financial Litigation Program, 300 Virginia Street E., Suite 4000, Charleston, West Virginia 25301, in writing and shall instruct his attorney to notify FLP immediately of his representation.

8. **COOPERATION.** Mr. Breckenridge will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Breckenridge may have counsel present except when appearing before a grand jury. Further, Mr. Breckenridge agrees to be named as an unindicted co-conspirator and unindicted aider and abettor, as appropriate, in subsequent indictments or informations.

9. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Breckenridge, and except as expressly provided for in paragraph 11 below, nothing contained in any statement or testimony provided by him pursuant to this agreement, or any evidence developed therefrom, will be used against him, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

10. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Breckenridge for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Breckenridge for perjury or false statement if such a situation should occur pursuant to this agreement.



Defendant's
Initials

Rhett Johnson, Esq.
June 29, 2022
Page 5

Re: Malik Breckenridge

11. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Breckenridge stipulate and agree that the facts comprising the offense of conviction and relevant conduct include the facts outlined in the "Stipulation of Facts;" attached hereto as "Plea Agreement Exhibit A."

Mr. Breckenridge agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by him, and he is subsequently tried for his violation of 18 U.S.C. § 2314 as alleged in the information and other relevant conduct, as more specifically described in the Stipulation of Facts, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Mr. Breckenridge or of any of his witnesses, or in rebuttal of any testimony introduced by him or on his behalf. Mr. Breckenridge knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Breckenridge understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

12. **AGREEMENT ON SENTENCING GUIDELINES.** Based on the foregoing Stipulation of Facts, the United States and Mr. Breckenridge agree that the following provisions of the United States Sentencing Guidelines apply to this case.

USSG §2B1.1

Base offense level (§ 2B1.1(a)(2))	7
Loss greater than \$40,000, less than \$95,000 (§ 2B1.1(b)(1)(D))	+ 6
Adjusted offense level	13

The United States and Mr. Breckenridge acknowledge and understand that the Court and the Probation Office are not bound by the parties' calculation of the United States Sentencing Guidelines set forth above and that the parties shall not have the right to withdraw from the plea agreement due to a disagreement with the Court's calculation of the appropriate guideline range.

MB

Defendant's
Initials

Rhett Johnson, Esq.
June 29, 2022
Page 6

Re: Malik Breckenridge

13. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Breckenridge knowingly and voluntarily waives the right to seek appellate review of his conviction and of any sentence of imprisonment, fine or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment, fine or term of supervised release is below or within the Sentencing Guideline range corresponding to offense level 13, regardless of criminal history category. Mr. Breckenridge also knowingly and voluntarily waives any right to seek appellate review of any claim or argument that (1) the statute of conviction in 18 U.S.C. § 1343 is unconstitutional, and (2) Mr. Breckenridge's conduct set forth in the Stipulation of Facts (Plea Agreement Exhibit A) does not fall within the scope of 18 U.S.C. § 1343.

The United States also waives its right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is within or above the Sentencing Guideline range corresponding to offense level 11, regardless of criminal history category.

Mr. Breckenridge also knowingly and voluntarily waives the right to challenge his guilty plea and his conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

14. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Breckenridge knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

15. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);

MB

Defendant's
Initials

Rhett Johnson, Esq.
June 29, 2022
Page 7

Re: Malik Breckenridge

- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Breckenridge;
- (f) Advise the Court concerning the nature and extent of Mr. Breckenridge's cooperation; and
- (g) Address the Court regarding the issue of Mr. Breckenridge's acceptance of responsibility.

16. **VOIDING OF AGREEMENT.** If either the United States or Mr. Breckenridge violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

17. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Breckenridge in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Breckenridge in any Court other than the United States District Court for the Southern District of West Virginia.

Acknowledged and agreed to on behalf of the United States:

WILLIAM S. THOMPSON
United States Attorney

By:



KATHLEEN E. ROBESON
Assistant United States Attorney

KER/dlh



Defendant's
Initials

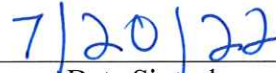
Rhett Johnson, Esq.
June 29, 2022
Page 8

Re: Malik Breckenridge

I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this 8-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.



Malik Breckenridge
Defendant



Date Signed



Rhett Johnson, Esq.
Counsel for Defendant



Date Signed

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:22-cr-00084

MALIK BRECKENRIDGE

STIPULATION OF FACTS

The United States and Malik Breckenridge (hereinafter, “defendant” or “I” or “my”) stipulate and agree that the facts comprising the offense of conviction in Count One of the two-count indictment filed with the plea agreement in the Southern District of West Virginia Criminal No. 2:22-cr-00084, and the relevant conduct for that offense,¹ include the following:

Coronavirus Relief Background

I agree that the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. The CARES Act authorized the Small Business Administration (“SBA”) to provide forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program (“PPP”).

I agree that the PPP allowed qualifying small businesses and other organizations to receive PPP loans. Businesses were required to use PPP loan proceeds to cover payroll costs, interest on mortgages, rent and utilities. The PPP allowed interest and principal on the PPP loans to be entirely forgiven if the businesses spent the loan proceeds to cover these expenses within a designated time and used a certain specified percentage of the PPP loan proceeds on payroll expenses.

I agree that to obtain a PPP loan, a qualifying business was required to submit a PPP loan application. The PPP loan application required the small business (through its authorized representative) to acknowledge the program rules and make affirmative certifications that the small business was eligible to obtain the PPP loan. In addition, businesses applying for a PPP loan were

¹ This Stipulation of Facts does not contain every fact known to Mr. Breckenridge and to the United States concerning his involvement in Count One as set forth in the Indictment and his relevant conduct.

required to provide documentation showing their prior gross income from either 2019 or 2020. Applicants also had to certify that the small business was in operation on February 15, 2020.

A PPP loan application was processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were 100% guaranteed by the SBA.

Defendant's Factual Basis for Plea

From April 4, 2021, through on or about August 10, 2021, I knowingly defrauded and obtained money from a lender in Florida and the SBA. I applied for two PPP loans on behalf of my purported business Malik Breck. However, Malik Breck was not a registered business entity in the State of West Virginia at the time I applied for the loans, nor was Malik Breck engaged in substantial, legitimate business activity on or before February 15, 2020.

At the beginning of April 2021, I submitted my first PPP application on behalf of Malik Breck. I falsely represented that Malik Breck—a fictitious business—received \$180,489.00 in gross income during 2019 and sought a PPP loan amount of \$20,833.00. I also falsely stated that Malik Breck was established in 2014 and in operation on February 15, 2020. As part of my application, I submitted a false Schedule C, Profit or Loss from Business (“Form 1040”), for the year 2019. The Form 1040 falsely stated that Malik Breck had earned \$180,489.00 in gross income during 2019. A PPP lender approved Malik Breck’s fraudulent application, and I received \$20,833.00 via ACH transfer from a lender in Florida on or about April 26, 2021. The \$20,833.00 ACH transfer traveled through interstate commerce because the transfer originated in Florida and the funds were electronically deposited in my bank account held in Charleston, West Virginia.

I applied for a second PPP loan with the same lender on Malik Breck’s behalf approximately two weeks later. On the second PPP loan application, I used the same false information that I submitted to the Lender in my first application, including the false representations that Malik Breck was established in 2014, had earned \$180,489.00 in gross income in 2019, and was in operation on February 15, 2020. The Florida lender approved my fraudulent application and transferred \$20,833.00 via ACH transfer into my account. The \$20,833.00 ACH transfer traveled through interstate commerce because the transfer originated in Florida and the funds were electronically deposited in my bank account held in Charleston, West Virginia.

A few months later, I applied to have my first and second loans forgiven even though I had not spent the loan proceeds on permissible business expenses. The two loans I obtained on Malik Breck’s behalf were forgiven by the SBA on or about August 8, 2021.

The United States and I stipulate and agree that I received at least \$41,666.00 in PPP funds from my wire fraud scheme. The United States and I also agree that Charleston, Kanawha County, West Virginia is located within the Southern District of West Virginia.

Stipulated and agreed to:



Malik Breckenridge
Defendant



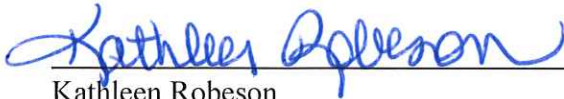
Date



Rhett Johnson, Esq.
Counsel for Defendant



Date



Kathleen Robeson
Assistant United States Attorney



Date