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Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ANDREW MARNELL, Defendant.	No. CR 20-319-RGK PLEA AGREEMENT FOR DEFENDANT ANDREW MARNELL

1. This constitutes the plea agreement between ANDREW MARNELL ("defendant") and the United States Attorney's Office for the Central District of California (the "USAO") and the Fraud Section of the Criminal Division of the United States Department of Justice (collectively with the USAO, the "Offices") in the above-captioned case. This agreement is limited to the Offices and cannot bind any

other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities.

DEFENDANT'S OBLIGATIONS

2. Defendant agrees to:

a. Give up the right to indictment by a grand jury and, at the earliest opportunity requested by the Offices and provided by the Court, appear and plead guilty to counts one and two of the two-count superseding information in the form attached to this agreement as Exhibit A or a substantially similar form, which charges defendant with bank fraud in violation of 18 U.S.C. § 1344(2) and money laundering in violation of 18 U.S.C. § 1957.

b. Not contest facts agreed to in this agreement.

c. Abide by all agreements regarding sentencing contained in this agreement.

d. Appear for all court appearances, surrender as ordered for service of sentence, obey all conditions of any bond, and obey any other ongoing court order in this matter.

e. Not commit any crime; however, offenses that would be excluded for sentencing purposes under United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not within the scope of this agreement.

f. Be truthful at all times with the United States Probation and Pretrial Services Office and the Court.

g. Pay the applicable special assessments at or before the time of sentencing unless defendant has demonstrated a lack of ability to pay such assessments.

h. Defendant agrees that any and all criminal debt obligations ordered by the Court will be due in full and immediately.

The government is not precluded from pursuing, in excess of any payment schedule set by the Court, any and all available remedies by which to satisfy defendant's payment of the full financial obligation, including referral to the Treasury Offset Program.

i. Complete the Financial Disclosure Statement on a form provided by the Offices and, within 30 days of defendant's entry of a guilty plea, deliver the signed and dated statement, along with all of the documents requested therein, to the USAO by either email at usacac.FinLit@usdoj.gov (preferred) or mail to the USAO Financial Litigation Section at 300 North Los Angeles Street, Suite 7516, Los Angeles, CA 90012. Defendant agrees that defendant's ability to pay criminal debt shall be assessed based on the completed Financial Disclosure Statement and all required supporting documents, as well as other relevant information relating to ability to pay.

j. Authorize the Offices to obtain a credit report upon returning a signed copy of this plea agreement.

k. Consent to the Offices inspecting and copying all of defendant's financial documents and financial information held by the United States Probation and Pretrial Services Office.

<u>FORFEITURE AND FINANCIAL ACCOUNTABILITY</u>

3. Defendant further agrees:

a. To forfeit all right, title, and interest in and to any and all monies, properties, and/or assets of any kind, derived from or acquired as a result of, or used to facilitate the commission of, or involved in the illegal activity to which defendant is pleading guilty, specifically including, but not limited to, the following (collectively, the "Forfeitable Property"):

i. $319,298.50 in United States currency seized from defendant's residence;

ii. One Rolex Oyster watch serial 3341V2104 seized from defendant's residence;

iii. One Rolex Oyster watch serial LW576819 seized from defendant's residence;

iv. One 2020 Land Rover Range Rover, VIN: SALGS2SE7LA597796 seized from defendant's residence;

v. One 2020 Ducati Motorcycle, VIN: ZDMDAGNW6LB014163 seized from defendant's residence;

vi. One SanDisk thumbdrive, 1B80, FBI bar code E6512901 seized from defendant's residence;

vii. One Lenovo ThinkPad 3 Dock, 1B77, FBI bar code E6512898 seized from defendant's residence;

viii. One MacBook Model A1286, Serial Number: W8016CXHAGU, 1B70, FBI bar code E6512891 seized from defendant's residence;

ix. One Dell Latitude Laptop, Serial Number: 6WM6NN2, 1B69, FBI bar code E6512890 seized from defendant's residence;

x. One Lenovo Yoga Laptop, Model Name: 80Y7, Serial Number: PF0YW75K, 1B68, FBI bar code E6512889 seized from defendant's residence;

xi. One Dell Latitude Laptop, Serial Number: 858BJM2, 1B67, FBI bar code E6512888 seized from defendant's residence;

xii. Five SanDisk USB sticks, 1B65, FBI bar code E6512886 seized from defendant's residence;

xiii. One black Apple Watch with black band, 1B64, FBI bar code E6512885 seized from defendant's residence;

xiv. One Gamer Storm tower, Serial Number: DC2016082400194, 1B62, FBI bar code E6512883 seized from defendant's residence;

xv. One Lenovo ThinkCentre computer tower, Model Number: S17Y00, Serial Number: MJ06EL2N, 1B59, FBI bar code E6512880 seized from defendant's residence;

xvi. One white and blue PNY USB flash drive, 32GB, 1B57, FBI bar code E6512878 seized from defendant's residence;

xvii. One digital camera Coolpix L310 with SD card in Lowepro case, 1B56, FBI bar code E6512877 seized from defendant's residence;

xviii. One iPhone 11 in black Spigen case, 1B54, FBI bar code E6512875 seized from defendant's residence;

xix. One Aria flash drive, 1B52, FBI bar code E6512873 seized from defendant's residence;

xx. One iWatch, Serial Number: FHLQKEBCG9J8 in 42mm case without band, 1B51, E6512872 seized from defendant's residence;

xxi. One Anker external hard drive, 1B50, FBI bar code E6512871 seized from defendant's residence;

xxii. One Garmin watch, M/N: HRM-S33 with band, 1B49, FBI bar code E6512870 seized from defendant's residence;

xxiii. One Royal Caribbean flash drive, 1B48, FBI bar code E6512869 seized from defendant's residence;

xxiv. One white and gold iPhone, Model A1533, IMEI: 357989057801980 in rubber case, 1B46, FBI bar code E6512867 seized from defendant's residence;

xxv. One white "Very Kool" cell phone, 1B45, FBI bar code E6512866 seized from defendant's residence;

xxvi. One grey MacBook, Model A2251, Serial Number: C02CWHKFML7H, 1B41, FBI bar code E6512862 seized from defendant's residence;

xxvii. One iPad in Louis Vuitton case cover, 1B37, FBI bar code E6512858 seized from defendant's residence;

xxviii. One grey MacBook, Model A2179, Serial Number: C02CQ20MPV4M, in blue case, 1B34, FBI bar code E6512855 seized from defendant's residence;

xxix. One grey MacBook, Model A2251, Serial Number: C02CJBZMML7H, 1B33, FBI bar code E6512854 seized from defendant's residence;

xxx. One Lenovo ThinkPad X1, Serial Number: R9-0QGLTR, 1B32, FBI bar code E6512853 seized from defendant's residence;

xxxi. One grey iPhone in black Spigen phone case, 1B31, FBI bar code E6512852 seized from defendant's residence;

xxxii. One grey Samsung phone, IMEI: 352620111233028, 1B30, in black Spigen phone case, FBI bar code E6512851 seized from defendant's residence;

xxxiii. One grey Samsung phone, IMEI: 352620111356092, 1B29, FBI bar code E6512850 seized from defendant's residence;

xxxiv. One unknown digital device, 1B66, FBI bar code E6512887 seized from defendant's residence;

xxxv. $165,894.19 seized from an account ending 6944 at Interactive Brokers LLC held in the name of Xtractd LLC;

xxxvi. $3,321.90 seized from an account ending 9164 at Interactive Brokers LLC held in the name of Andrew J. Marnell;

xxxvii. $526.32 seized from an account ending 2842 at Interactive Brokers LLC held in the name of Andrew J. Marnell;

xxxix. $1,366,895.04 seized from an account ending 2627 at Charles Schwab Inc. and Charles Schwab Futures, subsidiaries of Charles Schwab Corporation held in the name of Andrew Marnell;

xl. $5,217.77 seized from an account ending 6538 at Aspiration Financial LLC held in the name of Andrew Marnell; and

xli. $324.84 seized from an account ending 6561 at Aspiration Financial LLC held in the name of Andrew Marnell.

b. To the Court's entry of an order of forfeiture at or before sentencing with respect to the Forfeitable Property and to the forfeiture of the assets.

c. That the Preliminary Order of Forfeiture shall become final as to the defendant upon entry.

d. To take whatever steps are necessary to pass to the United States clear title to the Forfeitable Property, including, without limitation, the execution of a consent decree of forfeiture and the completing of any other legal documents required for the transfer of title to the United States.

e. Not to contest any administrative forfeiture proceedings or civil judicial proceedings commenced against the Forfeitable Property. If defendant submitted a claim and/or petition for remission for all or part of the Forfeitable Property on behalf of himself or any other individual or entity, defendant shall and hereby does withdraw any such claims or petitions, and further agrees to waive any right he may have to seek remission or mitigation of the forfeiture of the Forfeitable Property. Defendant further waives any and all notice requirements of 18 U.S.C. § 983(a)(1)(A).

f. Not to assist any other individual in any effort falsely to contest the forfeiture of the Forfeitable Property.

g. Not to claim that reasonable cause to seize the Forfeitable Property was lacking.

h. To prevent the transfer, sale, destruction, or loss of any and all assets described above to the extent defendant has the ability to do so.

i. To fill out and deliver to the USAO a completed financial statement listing defendant's assets on a form provided by the USAO.

j. That forfeiture of Forfeitable Property shall not be counted toward satisfaction of any special assessment, fine, restitution, costs, or other penalty the Court may impose.

k. With respect to any criminal forfeiture ordered as a result of this plea agreement, defendant waives: (1) the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcements of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment; (2) all constitutional and statutory challenges to the forfeiture (including by direct appeal, habeas corpus or any other means); and (3) all constitutional, legal, and equitable defenses to the forfeiture of the Forfeitable Property in any proceeding on any grounds including, without limitation, that the forfeiture constitutes an excessive fine or punishment. Defendant acknowledges that the forfeiture of the Forfeitable Property is part of the sentence that may be imposed in this case and waives any failure by the Court to advise defendant of this, pursuant to Federal Rule of Criminal Procedure 11(b)(1)(J), at the time the Court accepts defendant's guilty pleas.

THE OFFICES' OBLIGATIONS

4. The Offices agree to:

a. Not contest facts agreed to in this agreement.

b. Abide by all agreements regarding sentencing contained in this agreement.

c. Except for criminal tax violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371), not further criminally prosecute defendant for violations of 15 U.S.C. § 645 and 18 U.S.C. §§ 1001, 1014, 1028, 1029, 1341, 1344, 1956, and 1957, arising out of defendant's conduct described in the agreed-to factual basis set forth in Exhibit B to this agreement. Defendant understands that the Offices are free to criminally prosecute defendant for any other unlawful past conduct or any unlawful conduct that occurs after the date of this agreement. Defendant agrees that at the time of sentencing the Court may consider the uncharged conduct in determining the applicable Sentencing Guidelines range, the propriety and extent of any departure from that range, and the sentence to be imposed after consideration of the Sentencing Guidelines and all other relevant factors under 18 U.S.C. § 3553(a).

d. At the time of sentencing, move to dismiss the underlying indictment as against defendant. Defendant agrees, however, that at the time of sentencing the Court may consider any dismissed charges in determining the applicable Sentencing Guidelines range, the propriety and extent of any departure from that range, and the sentence to be imposed.

e. At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility for the offenses up to and including the time of sentencing, recommend a two-level reduction in the applicable Sentencing Guidelines offense level, pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an additional one-level reduction if available under that section.

f. Recommend that defendant be sentenced to a term of imprisonment no higher than the low end of the applicable Sentencing Guidelines range, provided that the offense level used by the Court to determine that range is 31 or higher and provided that the Court does not depart downward in offense level or criminal history category. For purposes of this agreement, the low end of the Sentencing Guidelines range is that defined by the Sentencing Table in U.S.S.G. Chapter 5, Part A.

NATURE OF THE OFFENSES

5. Defendant understands that for defendant to be guilty of the crime charged in count one of the superseding information, that is, bank fraud, in violation of Title 18, United States Code, Section 1344(2), the following must be true:

First, defendant knowingly carried out a scheme or plan to obtain money or property from a financial institution by making false statements or promises;

Second, defendant knew that the statements or promises were false;

Third, the statements or promises were material, that is, they had a natural tendency to influence, or were capable of influencing, a financial institution to part with money or property;

Fourth, defendant acted with the intent to defraud, that is, the intent to deceive and cheat; and

Fifth, the financial institution was federally insured.

6. Defendant understands that for defendant to be guilty of the crime charged in count two of the superseding information, that is, money laundering, in violation of Title 18, United States Code, Section 1957, the following must be true:

First, the defendant knowingly engaged or attempted to engage in a monetary transaction;

Second, the defendant knew the transaction involved criminally derived property;

Third, the property had a value greater than $10,000;

Fourth, the property was, in fact, derived from bank fraud as alleged in count two of the superseding information; and

Fifth, the transaction occurred in the United States.

The term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate commerce, of funds or a monetary instrument by, through, or to a financial institution. The term "criminally derived property" means any property constituting, or derived from, the proceeds of a criminal offense.

PENALTIES AND RESTITUTION

7. Defendant understands that the statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1344(2), is: 30 years' imprisonment; a 5-year period of

supervised release; a fine of $1,000,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of $100.

8. Defendant understands that the statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1957, is: 10 years' imprisonment; a 3-year period of supervised release; a fine of $250,000 or twice the twice the amount of the criminally derived property involved in the offense, whichever is greatest; and a mandatory special assessment of $100.

9. Defendant understands, therefore, that the total maximum sentence for all offenses to which defendant is pleading guilty is: 40 years' imprisonment; a 5-year period of supervised release; a fine of $1,250,000 or twice the gross gain or gross loss resulting from the offenses, whichever is greatest; and a mandatory special assessment of $200.

10. Defendant understands that defendant will be required to pay full restitution to the victims of the offenses to which defendant is pleading guilty. Defendant agrees that, in return for the Offices' compliance with their obligations under this agreement, the Court may order restitution to persons other than the victims of the offenses to which defendant is pleading guilty and in amounts greater than those alleged in the counts to which defendant is pleading guilty. In particular, defendant agrees that the Court may order restitution to any victim of any of the following for any losses suffered by that victim as a result: (a) any relevant conduct, as defined in U.S.S.G. § 1B1.3, in connection with the offenses to which defendant is pleading guilty; and (b) any counts dismissed and charges not prosecuted pursuant to this agreement as well as all

relevant conduct, as defined in U.S.S.G. § 1B1.3, in connection with those counts and charges. The parties currently believe that the applicable amount of restitution is approximately $7,341,376.33, but recognize and agree that this amount could change based on facts that come to the attention of the parties prior to sentencing.

11. Defendant understands that under 21 U.S.C. § 862a, defendant will not be eligible for assistance under state programs funded under the Social Security Act or Federal Food Stamp Act or for federal food stamp program benefits, and that any such benefits or assistance received by defendant's family members will be reduced to reflect defendant's ineligibility.

12. Defendant understands that supervised release is a period of time following imprisonment during which defendant will be subject to various restrictions and requirements. Defendant understands that if defendant violates one or more of the conditions of any supervised release imposed, defendant may be returned to prison for all or part of the term of supervised release authorized by statute for the offense that resulted in the term of supervised release, which could result in defendant serving a total term of imprisonment greater than the statutory maximum stated above.

13. Defendant understands that, by pleading guilty, defendant may be giving up valuable government benefits and valuable civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury. Defendant understands that he is pleading guilty to a felony and that it is a federal crime for a convicted felon to possess a firearm or ammunition. Defendant understands that the convictions in this case may also subject defendant to various other collateral consequences,

including but not limited to revocation of probation, parole, or supervised release in another case and suspension or revocation of a professional license. Defendant understands that unanticipated collateral consequences will not serve as grounds to withdraw defendant's guilty pleas.

14. Defendant and his counsel have discussed the fact that, and defendant understands that, if defendant is not a United States citizen, the convictions in this case makes it practically inevitable and a virtual certainty that defendant will be removed or deported from the United States. Defendant may also be denied United States citizenship and admission to the United States in the future. Defendant understands that while there may be arguments that defendant can raise in immigration proceedings to avoid or delay removal, removal is presumptively mandatory and a virtual certainty in this case. Defendant further understands that removal and immigration consequences are the subject of a separate proceeding and that no one, including his attorney or the Court, can predict to an absolute certainty the effect of his convictions on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his pleas may entail, even if the consequence is automatic removal from the United States.

FACTUAL BASIS

15. Defendant admits that defendant is, in fact, guilty of the offenses to which defendant is agreeing to plead guilty. Defendant and the Offices agree to the statement of facts set forth in Exhibit B to this agreement and incorporated herein by reference, and agree that this statement of facts is sufficient to support pleas of guilty to the charges described in this agreement and to establish the

Sentencing Guidelines factors set forth in paragraph 17 below but is not meant to be a complete recitation of all facts relevant to the underlying criminal conduct or all facts known to either party that relate to that conduct.

SENTENCING FACTORS

16. Defendant understands that in determining defendant's sentence the Court is required to calculate the applicable Sentencing Guidelines range and to consider that range, possible departures under the Sentencing Guidelines, and the other sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant understands that the Sentencing Guidelines are advisory only, that defendant cannot have any expectation of receiving a sentence within the calculated Sentencing Guidelines range, and that after considering the Sentencing Guidelines and the other § 3553(a) factors, the Court will be free to exercise its discretion to impose any sentence it finds appropriate up to the maximum set by statute for the crimes of conviction.

17. Defendant and the Offices agree to the following applicable Sentencing Guidelines factors:

Base Offense Level:	7	[U.S.S.G. § 2B1.1(a)(1)]
<u>Specific Offense Characteristics</u>		
Intended loss greater than $9,500,000 and less than or equal to $25,000,000	+20	[U.S.S.G. § 2B1.1(b)(1)(K)]
More than $1,000,000 derived from a financial institution	+2	[U.S.S.G. § 2B1.1(b)(17)]
1957 Money Laundering	+1	[U.S.S.G. §§ 2S1.1(a)(1) & (b)(2)(A), 3D1.2(c)]

18. Defendant and the Offices reserve the right to argue that additional specific offense characteristics, adjustments, and departures under the Sentencing Guidelines are appropriate.

19. Defendant understands that there is no agreement as to defendant's criminal history or criminal history category.

20. Defendant and the Offices reserve the right to argue for a sentence outside the sentencing range established by the Sentencing Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1), (a)(2), (a)(3), (a)(6), and (a)(7).

<u>WAIVER OF CONSTITUTIONAL RIGHTS</u>

21. Defendant understands that by pleading guilty, defendant gives up the following rights:

a. The right to persist in a plea of not guilty.

b. The right to a speedy and public trial by jury.

c. The right to be represented by counsel -- and if necessary have the Court appoint counsel -- at trial. Defendant understands, however, that, defendant retains the right to be represented by counsel -- and if necessary have the Court appoint counsel -- at every other stage of the proceeding.

d. The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e. The right to confront and cross-examine witnesses against defendant.

f. The right to testify and to present evidence in opposition to the charges, including the right to compel the attendance of witnesses to testify.

g. The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

h. Any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

WAIVER OF RETURN OF DIGITAL DATA

22. Understanding that the government has in its possession digital devices and/or digital media seized from defendant, defendant waives any right to the return of digital data contained on those digital devices and/or digital media and agrees that if any of these digital devices and/or digital media are returned to defendant, the government may delete all digital data from those digital devices and/or digital media before they are returned to defendant.

WAIVER OF APPEAL OF CONVICTION

23. Defendant understands that, with the exception of an appeal based on a claim that defendant's guilty pleas were involuntary, by pleading guilty defendant is waiving and giving up any right to appeal defendant's convictions on the offenses to which defendant is pleading guilty. Defendant understands that this waiver includes, but is not limited to, arguments that the statutes to which defendant is pleading guilty are unconstitutional, and any and all claims that the statement of facts provided herein is insufficient to support defendant's pleas of guilty.

LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

24. Defendant agrees that, provided the Court imposes a total term of imprisonment on all counts of conviction of no more than 135 months, defendant gives up the right to appeal all of the following:

(a) the procedures and calculations used to determine and impose any portion of the sentence; (b) the term of imprisonment imposed by the Court; (c) the fine imposed by the Court, provided it is within the statutory maximum; (d) to the extent permitted by law, the constitutionality or legality of defendant's sentence, provided it is within the statutory maximum; (e) the amount and terms of any restitution order, provided it requires payment of no more than $7,341,376.33; (f) the term of probation or supervised release imposed by the Court, provided it is within the statutory maximum; and (g) any of the following conditions of probation or supervised release imposed by the Court: the conditions set forth in Amended General Order 20-04 of this Court; the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

25. The Offices agree that, provided (a) all portions of the sentence are at or above the statutory minimum and at or below the statutory maximum specified above and (b) the Court imposes a term of imprisonment of no less than 108 months, the Offices give up their right to appeal any portion of the sentence, with the exception that the Offices reserve the right to appeal the amount of restitution ordered if that amount is less than $7,341,376.33.

WAIVER OF COLLATERAL ATTACK

26. Defendant also gives up any right to bring a post-conviction collateral attack on the convictions or sentence, including any order of restitution, except a post-conviction collateral attack based on a claim of ineffective assistance of counsel, a claim of newly discovered evidence, or an explicitly retroactive change in the applicable Sentencing Guidelines,

sentencing statutes, or statutes of conviction. Defendant understands that this waiver includes, but is not limited to, arguments that the statutes to which defendant is pleading guilty are unconstitutional, and any and all claims that the statement of facts provided herein is insufficient to support defendant's pleas of guilty. The agreement in this paragraph does not affect in any way the right of the Offices to appeal the sentence imposed by the Court.

RESULT OF WITHDRAWAL OF GUILTY PLEA

27. Defendant agrees that if, after entering guilty pleas pursuant to this agreement, defendant seeks to withdraw and succeeds in withdrawing defendant's guilty pleas on any basis other than a claim and finding that entry into this plea agreement was involuntary, then (a) the Offices will be relieved of all of its obligations under this agreement; and (b) should the Offices choose to pursue any charge that was either dismissed or not filed as a result of this agreement, then (i) any applicable statute of limitations will be tolled between the date of defendant's signing of this agreement and the filing commencing any such action; and (ii) defendant waives and gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such action, except to the extent that such defenses existed as of the date of defendant's signing this agreement.

RESULT OF VACATUR, REVERSAL OR SET-ASIDE

28. Defendant agrees that if any count of conviction is vacated, reversed, or set aside, the Offices may: (a) ask the Court to resentence defendant on the remaining count of conviction, with both the Offices and defendant being released from any stipulations

regarding sentencing contained in this agreement, (b) ask the Court to void the entire plea agreement and vacate defendant's guilty plea on the remaining count of conviction, with both the Offices and defendant being released from all their obligations under this agreement, and defendant agreeing that any statute of limitations will be tolled, and all speedy trial claims and claims of pre-indictment delay will be waived, to the same extent as if a breach had been declared, or (c) leave defendant's remaining conviction, sentence, and plea agreement intact. Defendant agrees that the choice among these three options rests in the exclusive discretion of the Offices.

EFFECTIVE DATE OF AGREEMENT

29. This agreement is effective upon signature and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney.

BREACH OF AGREEMENT

30. Defendant agrees that if defendant, at any time after the effective date of this agreement, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the Offices may declare this agreement breached. All of defendant's obligations are material, a single breach of this agreement is sufficient for the Offices to declare a breach, and defendant shall not be deemed to have cured a breach without the express agreement of the Offices in writing. If the Offices declare this agreement breached, and the Court finds such a breach to have occurred, then: (a) if defendant has previously entered guilty pleas pursuant to this agreement, defendant will not be able to withdraw

the guilty pleas, and (b) the Offices will be relieved of all their obligations under this agreement.

31. Following the Court's finding of a knowing breach of this agreement by defendant, should the Offices choose to pursue any charge that was either dismissed or not filed as a result of this agreement, then:

a. Defendant agrees that any applicable statute of limitations is tolled between the date of defendant's signing of this agreement and the filing commencing any such action.

b. Defendant waives and gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such action, except to the extent that such defenses existed as of the date of defendant's signing this agreement.

c. Defendant agrees that: (i) any statements made by defendant, under oath, at the guilty plea hearing (if such a hearing occurred prior to the breach); (ii) the agreed to factual basis statement in this agreement; and (iii) any evidence derived from such statements, shall be admissible against defendant in any such action against defendant, and defendant waives and gives up any claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that the statements or any evidence derived from the statements should be suppressed or are inadmissible.

COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES OFFICE NOT PARTIES

32. Defendant understands that the Court and the United States Probation and Pretrial Services Office are not parties to this agreement and need not accept any of the Offices' sentencing recommendations or the parties' agreements to facts or sentencing factors.

33. Defendant understands that both defendant and the Offices are free to: (a) supplement the facts by supplying relevant information to the United States Probation and Pretrial Services Office and the Court, (b) correct any and all factual misstatements relating to the Court's Sentencing Guidelines calculations and determination of sentence, and (c) argue on appeal and collateral review that the Court's Sentencing Guidelines calculations and the sentence it chooses to impose are not error, although each party agrees to maintain its view that the calculations in paragraph 17 are consistent with the facts of this case. While this paragraph permits both the Offices and defendant to submit full and complete factual information to the United States Probation and Pretrial Services Office and the Court, even if that factual information may be viewed as inconsistent with the facts agreed to in this agreement, this paragraph does not affect defendant's and the Offices' obligations not to contest the facts agreed to in this agreement.

34. Defendant understands that even if the Court ignores any sentencing recommendation, finds facts or reaches conclusions different from those agreed to, and/or imposes any sentence up to the maximum established by statute, defendant cannot, for that reason, withdraw defendant's guilty pleas, and defendant will remain bound to

fulfill all defendant's obligations under this agreement. Defendant understands that no one -- not the prosecutor, defendant's attorney, or the Court -- can make a binding prediction or promise regarding the sentence defendant will receive, except that it will be within the statutory maximum.

NO ADDITIONAL AGREEMENTS

35. Defendant understands that, except as set forth herein, and in any agreement or addendum signed by all parties, there are no promises, understandings, or agreements between the Offices and defendant or defendant's attorney, and that no additional promise, understanding, or agreement may be entered into unless in a writing signed by all parties or on the record in court.

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PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

36. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION

TRACY L. WILKISON
Acting United States Attorney

09/03/2021

KERRY L. QUINN
Assistant United States Attorney
SCOTT ARMSTRONG
Trial Attorney, Fraud Section

Date

9/3/21

ANDREW MARNELL
Defendant

Date

9/3/21

NEHA CHRISTERNA
Attorney for Defendant ANDREW MARNELL

Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.

ANDREW MARNELL
Defendant

9/3/21
Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am ANDREW MARNELL's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of guilty pleas pursuant to this agreement.

9/3/21

NEHA CHRISTERNA
Attorney for Defendant
ANDREW MARNELL

Date

EXHIBIT A

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ANDREW MARNELL, aka "Andrew Maxwell," aka "Andrew Merrill," aka "Tyler Lerman," Defendant.	CR No. 20-319(A)-RGK F I R S T S U P E R S E D I N G I N F O R M A T I O N [18 U.S.C. § 1344(2): Bank Fraud; 18 U.S.C. § 1957: Money Laundering); 18 U.S.C. § 982: Criminal Forfeiture]

The Acting United States Attorney charges:

COUNT ONE

[18 U.S.C. §§ 1344(2), 2(b)]

A. INTRODUCTORY ALLEGATIONS

At times relevant to this First Superseding Information:

Defendant MARNELL and the MARNELL-Controlled Entities

37. Defendant ANDREW MARNELL, also known as ("aka") "Andrew Maxwell," aka "Andrew Merrill," aka "Tyler Lerman," was a resident of Los Angeles, California.

38. Defendant MARNELL owned and controlled corporate entities registered in various states under various names, including Shale

Creek LLC ("Shale Creek"), Slatestone LLC ("Slatestone"), and Quicksilver LLC ("Quicksilver") (the "MARNELL-controlled entities").

The Paycheck Protection Program

39. 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. One source of relief provided by the CARES Act was the authorization of up to $349 billion in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP"). In or around April 2020, Congress authorized over $300 billion in additional PPP funding.

40. In order to obtain a PPP loan, a qualifying business was required to submit a PPP loan application signed by an authorized representative of the business. The PPP loan application required the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application, the applicant (through its authorized representative) was required to state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, the applicant was required to provide documentation showing its payroll expenses.

41. A business's PPP loan application was received and processed, in the first instance, by a participating lender. If a PPP loan application was approved, the participating lender funded

the PPP loan using its own monies. Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the Small Business Administration ("SBA") in the course of processing the loan.

42. PPP loan proceeds were required to be used by the business on certain permissible expenses: payroll costs, interest on mortgages, rent, and utilities. The PPP allowed the interest and principal on the PPP loan to be entirely forgiven if the business spent the loan proceeds on these expense items within a designated period of time after receiving the proceeds and used a certain amount of the PPP loan proceeds on payroll expenses.

Financial Institutions & Bank Account Controlled By Defendant MARNELL

43. Lender A was a financial institution based in Texas and was an SBA approved lender of PPP loans.

44. Casino 1 was a casino and gaming establishment with an annual gaming revenue of more than $1,000,000 and was licensed under the laws of the State of Nevada, and qualified as a "financial institution" for the purpose of 31 U.S.C. § 5312 and 18 U.S.C. § 1957.

45. Bank A was a financial institution based in San Francisco, California.

46. Defendant MARNELL controlled and was a signatory to multiple accounts at an affiliate of Bank A, which was a broker registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), and qualified as a "financial institution" for the purpose of 31 U.S.C. § 5312 and 18 U.S.C. § 1957. Among the accounts that defendant

MARNELL controlled at the Bank A affiliate was an individual brokerage account in the name of "Andrew Justin Marnell," account number ending in 2627 (the "2627 account").

B. THE SCHEME TO DEFRAUD

47. Beginning in or about March 2020, and continuing until on or about July 16, 2020, in Los Angeles County, within the Central District of California, and elsewhere, defendant MARNELL, together with others known and unknown to the Acting United States Attorney, knowingly and with intent to defraud, devised, participated in, executed, and attempted to execute a scheme to obtain moneys, funds, credits, assets, and other property owned by and in the custody and control of Lender A by means of materially false and fraudulent pretenses, representations, and promises, and the concealment of material facts.

48. The fraudulent scheme operated and was carried out, in substance, as follows:

a. Defendant MARNELL submitted, and caused to be submitted, false and fraudulent applications to Lender A for PPP loans purportedly on behalf of the MARNELL-controlled entities (collectively, the "PPP Applications"). Specifically:

i. On or about April 14, 2020, defendant MARNELL submitted, and caused to be submitted, an application for a PPP loan in the amount of $439,000 for borrower Shale Creek, which was represented to be a Montana-headquartered firm, owned and controlled by "Tyler Lerman," having 26 employees and average monthly payroll expenses of $175,600;

ii. On or about April 29, 2020, defendant MARNELL submitted, and caused to be submitted, an application for a PPP loan in the amount of $1,341,700 for borrower Slatestone, which was represented to be a Wyoming-headquartered firm, owned and controlled by "Andrew Merrill," having 75 employees and average monthly payroll expenses of $536,680; and

iii. On or about May 11, 2020, defendant MARNELL submitted, and caused to be submitted, an application for a PPP loan in the amount of $1,818,000 for borrower Quicksilver, which was represented to be a Montana-headquartered firm, owned and controlled by "Andrew Maxwell," having 129 employees and average monthly payroll expenses of $727,200.

b. Defendant MARNELL submitted, and caused to be submitted, false documents and information to Lender A to obtain and to try to obtain PPP loans in the names of the MARNELL-controlled entities, including the following:

i. A false identification document concerning the ownership and control of Quicksilver, namely, a photograph of a fake United States passport in the name of "Andrew Maxwell," with defendant MARNELL's picture;

ii. False Internal Revenue Service ("IRS") Form 940 tax forms for Shale Creek, Slatestone, and Quicksilver, purporting to be Employer's Annual Federal Unemployment Tax Act Returns filed with the IRS for those entities; and

iii. False payroll data and documentation for Shale Creek, Slatestone, and Quicksilver, including documents purporting to be payroll registers for 2019 and 2020, purporting to show wages paid to employees of those entities.

c. Defendant MARNELL made, and caused to be made, false statements in the PPP Applications, which defendant MARNELL knew were false when he made them and caused them to be made. For example:

i. Defendant MARNELL falsely represented that the funds sought through the PPP Applications would be used to pay payroll and other business expenses of the MARNELL-controlled entities, when, in fact, defendant MARNELL intended to use and did use the PPP loan proceeds to fund options and futures trading activities, to engage in gambling and entertainment activities, and to pay other personal expenses;

ii. Defendant MARNELL falsely represented that "the Applicant has not and will not receive another loan under the Paycheck Protection Program," and that the applicant did not own any other business or have common management with any other business, when, in fact, defendant MARNELL intended to and did obtain other loans under the Paycheck Protection Program for the MARNELL-controlled entities and all the MARNELL-controlled entities had common management; and

iii. Defendant MARNELL falsely represented that "Tyler Lerman," "Andrew Merrill," and "Andrew Maxwell" were the owners of the MARNELL-controlled entities, when, in fact, as defendant MARNELL then knew, he owned and controlled those entities.

d. In reliance on defendant MARNELL's materially false statements and his concealment of material facts, Lender A approved and funded the PPP loans sought by defendant MARNELL in the names of the MARNELL-controlled entities. Specifically, on or about the following dates, Lender A sent the following funding wires:

i. On or about April 16, 2020, Lender A wired, via ACH transfer, approximately $439,000 to an account ending 2842 at Interactive Brokers LLC, maintained in defendant MARNELL's name;

ii. On or about May 11, 2020, Lender A wired, via ACH transfer, approximately $1,341,700 to the 2627 account; and

iii. On or about May 12, 2020, Lender A wired, via ACH transfer, approximately $1,818,000 to an account ending 6279 at Live Oak Banking Company, which was a business account in Quicksilver's name on which defendant MARNELL was the sole signer.

e. From on or about April 16, 2020, through on or about July 16, 2020, in contravention of defendant MARNELL's representations to Lender A and PPP rules, defendant MARNELL used PPP loan proceeds from Lender A to, among other things, fund options and futures trading activities, to engage in gambling and entertainment activities, and to pay other personal expenses.

C. EXECUTION OF THE SCHEME

49. On or about April 29, 2020, in Los Angeles County, within the Central District of California, and elsewhere, defendant MARNELL committed and willfully caused others to commit an act which constituted an execution of the fraudulent scheme, namely, the submission of an application to Lender A for a PPP loan in the name of Slatestone.

COUNT TWO

[18 U.S.C. §§ 1957, 2(b)]

50. On or about June 5, 2020, in Los Angeles County, within the Central District of California, and elsewhere, defendant ANDREW MARNELL, aka "Andrew Maxwell," aka "Andrew Merrill," aka "Tyler Lerman," knowing that the funds involved represented the proceeds of some form of unlawful activity, engaged in and willfully caused others to engage in a monetary transaction, in and affecting interstate commerce, in criminally derived property of a value greater than $10,000, namely, the transfer of $150,000 from the 2627 Account to Casino 1, which property, in fact, was derived from specified unlawful activity, namely, bank fraud, in violation of Title 18, United States Code, Section 1344(2), as charged in Count One of this First Superseding Information.

FORFEITURE ALLEGATION ONE

[18 U.S.C. § 982(a)(2)]

51. Pursuant to Rule 32.2(a) of the Federal Rules of Criminal Procedure, notice is hereby given that the United States of America will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Section 982(a)(2), in the event of the conviction of defendant ANDREW MARNELL, aka "Andrew Maxwell," aka "Andrew Merrill," aka "Tyler Lerman," of the offense set forth in Count One of this First Superseding Information.

52. Defendant MARNELL, if so convicted, shall forfeit to the United States of America the following:

(a) All right, title and interest in any and all property, real or personal, constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of the offense; and

(b) To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph (a).

53. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), defendant MARNELL, if so convicted, shall forfeit substitute property, up to the total value of the property described in the preceding paragraph if, as the result of any act or omission of defendant MARNELL, the property described in the preceding paragraph, or any portion thereof: (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to or deposited with a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; or (e) has

been commingled with other property that cannot be divided without difficulty.

FORFEITURE ALLEGATION TWO

[18 U.S.C. § 982(a)(1)]

54. Pursuant to Rule 32.2(a) of the Federal Rules of Criminal Procedure, notice is hereby given that the United States will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Section 982(a)(1), in the event of the conviction of defendant ANDREW MARNELL, aka "Andrew Maxwell," aka "Andrew Merrill," aka "Tyler Lerman," of the offense set forth in Count Two of this First Superseding Information.

55. Defendant MARNELL, if so convicted, shall forfeit to the United States of America the following:

(a) Any property, real or personal, involved in such offense, and any property traceable to such property; and

(b) To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph (a).

56. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), and Title 18, United States Code, Section 982(b)(2), the defendant, if so convicted, shall forfeit substitute property, if, by any act or omission of the defendant, the property described in the preceding paragraph, or any portion thereof: (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to, or deposited with a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; or (e) has been commingled with other property that cannot be divided without difficulty. Substitution of assets shall not be ordered, however, where the convicted defendant acted merely as an

intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense giving rise to the forfeiture, conducted three or more separate transactions involving a total of $100,000.00 or more in any twelve-month period.

TRACY L. WILKISON
Acting United States Attorney

SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division

RANEE A. KATZENSTEIN
Assistant United States Attorney
Chief, Major Frauds Section

JOSEPH BEEMSTERBOER
Chief, Fraud Section
United States Department of Justice

MONICA E. TAIT
Assistant United States Attorney
Deputy Chief, Major Frauds Section

KERRY L. QUINN
Assistant United States Attorney
Major Frauds Section

SCOTT ARMSTRONG
Trial Attorney, Fraud Section
United States Department of Justice

EXHIBIT B

EXHIBIT B TO PLEA AGREEMENT FOR DEFENDANT ANDREW MARNELL

STATEMENT OF FACTS SUPPORTING PLEA AGREEMENT

Defendant ANDREW MARNELL also known as ("aka") "Andrew Maxwell," aka "Andrew Merrill," aka "Tyler Lerman" ("defendant"), stipulates and agrees that he committed the following criminal activity:

BACKGROUND

1. At all relevant times, defendant was a resident of Los Angeles, California, within the Central District of California.

2. Defendant owned and controlled corporate entities registered in various states under various names, including Shale Creek LLC ("Shale Creek"), Slatestone LLC ("Slatestone"), Quicksilver LLC ("Quicksilver"), xtracted LLC ("xtracted"), Stratrock Ventures LLC ("Stratrock"), and East Bay Associates LLC ("East Bay Associates") (collectively, the "defendant-controlled entities").

The Paycheck Protection Program

3. 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. One source of relief provided by the CARES Act was the authorization of up to $349 billion in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP"). In or around April 2020, Congress authorized over $300 billion in additional PPP funding.

4. In order to obtain a PPP loan, a qualifying business was required to submit a PPP loan application signed by an authorized representative of the business. The PPP loan application required the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application, the applicant (through its authorized representative) was required to state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, the applicant was required to provide documentation showing its payroll expenses.

5. A business's PPP loan application was received and processed, in the first instance, by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies. Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the Small Business Administration ("SBA") in the course of processing the loan.

6. PPP loan proceeds were required to be used by the business on certain permissible expenses: payroll costs, interest on mortgages, rent, and utilities. The PPP allowed the interest and principal on the PPP loan to be entirely forgiven if the business spent the loan proceeds on these expense items within a designated period of time after receiving the proceeds

and used a certain amount of the PPP loan proceeds on payroll expenses.

The Economic Injury Disaster Loan Program

7. The Economic Injury Disaster Loan Program ("EIDL") was an SBA program that provided low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters.

8. The CARES Act authorized the SBA to provide EIDL loans of up to $2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic.

9. To obtain an EIDL loan, a qualifying business was required to submit an application to the SBA and provide information about the business's operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. In the case of EIDL loans for COVID-19 relief, the 12-month period was the 12-month period from January 31, 2019, to January 31, 2020. The applicant was also required to certify that all of the information in the application was true and correct to the best of the applicant's knowledge.

10. EIDL loan applications were submitted directly to the SBA and processed by the agency with support from a government contractor. The amount of the loan, if the application was approved, was determined based, in part, on the information provided by the applicant about employment, revenue, and cost of goods sold, as described in paragraph 9 above. Any funds issued under an EIDL loan were issued directly by the SBA.

11. EIDL loan funds could be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments. If the applicant also obtained a loan under the PPP, the EIDL loan funds could not be used for the same purpose as the PPP loan funds.

Financial Institutions

12. "Lender A" was a federally-insured financial institution based in Texas that was an approved SBA lender of PPP loans.

13. "Lender B" was a non-bank lender based in New York, New York that was an approved SBA lender of PPP loans.

14. "Lender C" was a non-bank lender based in San Francisco, California that was an approved SBA lender of PPP loans.

15. "Lender D" was a federally-insured financial institution based in Reading, Pennsylvania that was an approved SBA lender of PPP loans.

16. "Lender E" was a non-bank lender based in Atlanta, Georgia that was an approved SBA lender of PPP loans.

17. Casino 1 was a casino and gaming establishment with an annual gaming revenue of more than $1,000,000 and was licensed under the laws of the State of Nevada, and qualified as a "financial institution" for the purpose of 31 U.S.C. § 5312 and 18 U.S.C. § 1957.

Bank Accounts Controlled by Defendant

18. Bank A was a financial institution based in San Francisco, California.

19. Defendant controlled and was a signatory to multiple accounts at an affiliate of Bank A, which was a broker registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), and which qualified as a "financial institution" for the purpose of 31 U.S.C. § 5312 and 18 U.S.C. § 1957. Among the accounts that defendant controlled at the Bank A affiliate was an individual brokerage account in the name of "Andrew Justin Marnell," account number ending in 2627 (the "2627 account").

I. BANK FRAUD SCHEME (COUNT 1)

20. Beginning in or about March 2020, and continuing until on or about July 16, 2020, in Los Angeles County, within the Central District of California, and elsewhere, defendant, together with others known and unknown to the Grand Jury, knowingly and with intent to defraud, devised, participated in, executed, and attempted to execute a scheme to obtain moneys, funds, credits, assets, and other property owned by and in the custody and control of Lender A by means of materially false and fraudulent pretenses, representations, and promises, and the concealment of material facts, in violation of 18 U.S.C. § 1344(2).

21. The fraudulent scheme operated and was carried out, in substance, as follows:

a. Defendant submitted, and caused to be submitted, false and fraudulent applications to Lender A for PPP loans purportedly on behalf of the defendant-controlled entities (collectively, the "PPP Applications to Lender A"). Specifically:

i. On or about April 14, 2020, defendant submitted, and caused to be submitted, an application for a PPP loan in the amount of $439,000 for borrower Shale Creek, which was represented to be a Montana-headquartered firm, owned and controlled by "Tyler Lerman," having 26 employees and average monthly payroll expenses of $175,600;

ii. On or about April 29, 2020, defendant submitted, and caused to be submitted, an application for a PPP loan in the amount of $1,341,700 for borrower Slatestone, which was represented to be a Wyoming-headquartered firm, owned and controlled by "Andrew Merrill," having 75 employees and average monthly payroll expenses of $536,680; and

iii. On or about May 11, 2020, defendant submitted, and caused to be submitted, an application for a PPP loan in the amount of $1,818,000 for borrower Quicksilver, which was represented to be a Montana-headquartered firm, owned and controlled by "Andrew Maxwell," having 129 employees and average monthly payroll expenses of $727,200.

b. Defendant submitted, and caused to be submitted, false documents and information to Lender A to obtain and to try to obtain PPP loans in the names of the defendant-controlled entities, including the following:

i. A false identification document concerning the ownership and control of Quicksilver, namely, a photograph of a fake United States passport in the name of "Andrew Maxwell," with defendant's picture;

ii. False Internal Revenue Service ("IRS") Form 940 tax forms for Shale Creek, Slatestone, and Quicksilver, purporting to be Employer's Annual Federal Unemployment Tax Act Returns filed with the IRS for those entities; and

iii. False payroll data and documentation for Shale Creek, Slatestone, and Quicksilver, including documents purporting to be payroll registers for 2019 and 2020, purporting to show wages paid to employees of those entities.

c. Defendant made, and caused to be made, false statements in the PPP Applications to Lender A, which defendant knew were false when he made them and caused them to be made. For example:

i. Defendant falsely represented that the funds sought through the PPP Applications to Lender A would be used to pay payroll and other business expenses of the defendant-controlled entities, when, in fact, defendant intended to use and did use the PPP loan proceeds to fund options and futures trading activities, to engage in gambling and entertainment activities, and to pay other personal expenses;

ii. Defendant falsely represented that "the Applicant has not and will not receive another loan under the Paycheck Protection Program," and that the applicant did not own any other business or have common management with any other business, when, in fact, defendant intended to and did obtain other loans under the Paycheck Protection Program for the defendant-controlled entities and all the defendant-controlled entities had common management; and

iii. Defendant falsely represented that "Tyler Lerman," "Andrew Merrill," and "Andrew Maxwell" were the owners of the defendant-controlled entities, when, in fact, as defendant then knew, he owned and controlled those entities.

d. In reliance on defendant's materially false statements and his concealment of material facts, Lender A approved and funded the PPP loans sought by defendant in the names of the defendant-controlled entities. Specifically, on or about the following dates, Lender A sent the following funding wires:

i. On or about April 16, 2020, Lender A wired, via ACH transfer, approximately $439,000 to an account ending 2842 at Interactive Brokers LLC, maintained in defendant's name;

ii. On or about May 11, 2020, Lender A wired, via ACH transfer, approximately $1,341,700 to an account ending 2627 at Charles Schwab Inc., maintained in defendant's name; and

iii. On or about May 12, 2020, Lender A wired, via ACH transfer, approximately $1,818,000 to an account ending 6279 at Live Oak Banking Company, which was a business account in Quicksilver's name on which defendant was the sole signer.

e. From on or about April 16, 2020, through on or about July 16, 2020, in contravention of defendant's representations to Lender A and PPP rules, defendant used PPP loan proceeds from Lender A to, among other things, fund options and futures trading activities, to engage in gambling and entertainment activities, and to pay other personal expenses.

C. EXECUTIONS OF THE SCHEME

22. On or about the following dates, in Los Angeles County, within the Central District of California, and elsewhere, defendant committed and willfully caused others to

commit the following acts, each of which constituted an execution of the fraudulent scheme:

DATE	ACT
4/14/2020	Submission of application to Lender A for PPP loan in the name of Shale Creek.
4/29/2020	Submission of application to Lender A for PPP loan in the name of Slatestone.
5/11/2020	Submission of application to Lender A for PPP loan in the name of Quicksilver.

III. MONEY LAUNDERING (COUNT 2)

23. Defendant also engaged in and willfully caused others to engage in the transfer, in or affecting interstate commerce, of funds by, through, or to a financial institution ("monetary transactions") using the proceeds of his bank fraud scheme to fund gambling activities, among other uses of criminal proceeds, including the following monetary transaction: On June 1, 2020, in Los Angeles County, defendant caused a $150,000 wire transfer from the 2726 account to Casino 1, which represented more than $10,000 in proceeds of the $1,341,700 PPP loan that defendant obtained from Lender A in the name of Slatestone. At the time of the monetary transaction, defendant knew that the $150,000 constituted, or was derived from, the proceeds he obtained from his bank fraud scheme, described above. Defendant understands and acknowledges that the transfer of the $150,000 constituted money laundering in violation of 18 U.S.C. § 1957.

IV. WIRE FRAUD SCHEME (RELEVANT CONDUCT)

24. Defendant also agrees that he engaged in the following related criminal conduct during and in preparation for the bank fraud scheme described above and that the bank fraud scheme and

wire fraud scheme described below and the conduct involved in both schemes were part of the same course of conduct and a common scheme or plan, and are relevant conduct under United States Sentencing Guideline 1B1.3.

A. <u>THE SCHEME TO DEFRAUD</u>

25. Beginning in or about March 2020, and continuing until in or about July 2020, in Los Angeles County, defendant knowingly and with intent to defraud, devised, participated in, executed, and attempted to execute a scheme to defraud Lenders A, B, C, D, and E and the SBA as to material matters, and to obtain moneys, funds, assets, and other property owned by and in the custody and control of Lenders A, B, C, D, and E and the SBA by means of material false and fraudulent pretenses, representations, and promises, and the concealment of material facts.

26. The fraudulent scheme operated and was carried out, in substance, as follows:

a. Defendant submitted false and fraudulent applications to Lenders A, B, C, D, and E and to the SBA for PPP and EIDL loans purportedly on behalf of the defendant-controlled entities.

b. Defendant submitted false documents and information to Lenders A, B, C, D and E and to the SBA to obtain and to try to obtain PPP and EIDL loans in the names of the defendant-controlled entities, including the submission of false identification documents, false Internal Revenue Service ("IRS") tax forms, and false payroll data and documentation.

c. Defendant made, and caused to be made, materially false and fraudulent statements in the applications for PPP and EIDL loans, which defendant knew were false and fraudulent when he made them and caused them to be made, including the following:

i. Defendant knowingly submitted fake payroll documentation, fake identification documents, and fake IRS tax forms as supporting documentation to obtain PPP and EIDL loans.

ii. Defendant falsely represented that the funds sought through the applications for PPP and EIDL loans would be used to pay payroll and other business expenses of the defendant-controlled entities, when, in fact, defendant intended to use and did use the loan proceeds to fund options and futures trading activities, to engage in gambling and entertainment activities, and to pay other personal expenses;

iii. Defendant falsely represented in PPP loan applications that "the Applicant has not and will not receive another loan under the Paycheck Protection Program," and that the applicant did not own any other business or have common management with any other business, when, in fact, defendant intended to and did obtain other loans under the Paycheck Protection Program for the defendant-controlled entities and all the defendant-controlled entities had common management; and

iv. Defendant falsely represented that "Tyler Lerman," "Andrew Merrill," "Andrew Maxwell," and defendant's husband, S.R., were the owners of the defendant-controlled entities, when, in fact, as defendant then knew, he owned and controlled those entities.

d. In reliance on defendant's materially false statements and his concealment of material facts, Lenders A, B, C, and D and the SBA approved and funded PPP and EIDL loans sought by defendant in the names of the defendant-controlled entities.

27. The PPP loans that that defendant obtained or attempted to obtain as part of the fraudulent scheme included the following:

Lender	**Borrower**	**Listed Principal**	**Requested Loan Amount/ Intended Loss**	**Funded Amount**	**Amount Still Outstanding (Restitution)**
Lender A	Shale Creek	Tyler Lerman	$439,000	$439,000	$439,000
Lender A	Quicksilver	Andrew Maxwell	$1,818,000	$1,818,000	$0
Lender A	Slatestone	Andrew Merrill	$1,341,700	$1,341,700	$1,341,700
Lender B	Quicksilver	Andrew Maxwell	$1,842,929.17	$1,842,929.17	$1,842,929.17
Lender B	Stratrock	S.R.	$1,842,929.16	$1,842,929.16	$1,842,929.16
Lender C	East Bay Associates	Andrew Maxwell	$456,917	$352,500	$352,500
Lender D	Xtractd	Andrew Marnell	$1,352,318	$1,352,318	$1,352,318
Lender E	Slatestone	Andrew Merrill	$1,301,050	$0	$0
Lender E	East Bay Associates	Andrew Maxwell	Not Available	$0	$0
Lender E	Quicksilver	Andrew Merrill	Not Available	$0	$0
Totals			**$10,394,843**	**$8,989,376**	**$7,171,376.33**

28. Defendant also obtained and attempted to obtain EIDL loans for defendant-controlled entities as part of the same fraudulent scheme and based on similar misrepresentations as he used to obtain and to attempt to obtain PPP loans, including misrepresentations concerning the revenue of defendant-

controlled entities and the intended use of loan proceeds. The EIDL loans that defendant obtained as part of the scheme included the following:

Lender	**Borrower**	**Listed Principal**	**Requested Loan Amount/ Intended Loss**	**Funded Amount**	**Amount Still Outstanding (Restitution)**
SBA	xtractd	Andrew Marnell	$160,000	$160,000	$160,000
SBA	Slatestone	Andrew Marnell	$160,000	$10,000	$10,000
Totals			**$320,000**	**$170,000**	**$170,000**

29. As set forth above, defendant purposefully sought to obtain $10,714,843 in fraudulent PPP and EIDL loans from Lenders A through E and the SBA in connection with this fraud scheme, and he owes approximately $7,341,376.33 in restitution.

B. USE OF THE WIRES

30. As one example of the use of interstate wires to execute the fraudulent scheme, on or about May 11, 2020, in Los Angeles County, defendant caused Lender A to transfer $1,341,700 via an interstate wire sent to the 2627 account, representing fraudulently-obtained PPP loan proceeds defendant had obtained from Lender A for borrower Slatestone.

Victim Impact & Other Sentencing Factors

31. In total, defendant fraudulently sought more than $10.7 million in small business loans, ultimately causing actual losses of more than $7 million.

32. Defendant obtained more than $1,000,000 from a financial institution as part of the fraudulent scheme, because he obtained more than $1 million from Lenders A, B, C, and D.

33. Defendant admits and acknowledges that the scheme involved money laundering in violation of 18 U.S.C. § 1957, including the money laundering transaction charged in count two of the superseding information.

* * *

CERTIFICATION OF DEFENDANT

I have read this STATEMENT OF FACTS IN SUPPORT OF PLEA AGREEMENT ("statement of facts") in its entirety. I have had enough time to review and consider this statement of facts, and I have carefully and thoroughly discussed every part of it with my attorney. I agree that this statement of facts is accurate and correct, and is sufficient to support pleas of guilty to the charges described in the plea agreement and to establish the Sentencing Guidelines factors set forth in paragraph 17 of the plea agreement.

A. J. Marnell 9/3/21

ANDREW MARNELL
Defendant

Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am ANDREW MARNELL's attorney. I have carefully and thoroughly discussed every part of this statement of facts with my client and agree that it is sufficient to support pleas of guilty to the charges described in the plea agreement and to establish the Sentencing Guidelines factors set forth in paragraph 17 of the plea agreement.

9/3/21