IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 21-cr-00165-RM

UNITED STATES OF AMERICA,

Plaintiff,

v.

2 CHANDLER SIMBECK,

Defendant.

PLEA AGREEMENT

The United States of America (the government), by and through Robert Brown, Assistant United States Attorney for the District of Colorado, and the defendant, CHANDLER SIMBECK personally and by counsel, Tyrone Glover, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1. This agreement binds only the Criminal Division of the United States Attorney's Office for the District of Colorado and the defendant.

I. AGREEMENT

A. Defendant's Plea of Guilty:

The defendant agrees

(1) to plead guilty to count 12 of the indictment which charge a violation of Title 18, United States Code, Section 371, Conspiracy to Defraud the United States

(2) to waive certain appellate and collateral attack rights, as explained in detail below.

Court Exhibit

1

(4) be liable for restitution in the amount of approximately $151,000.00 which could include joint and several liability for some or all of the amount with any coconspirator.

(5) to the entry of a final order of forfeiture described fully below.

B. Government's Obligations:

This agreement is made pursuant to Fed.R.Crim.P.11(c)(1)(A). The government agrees to move to dismiss the remaining charges against the defendant in the indictment. Should the plea of guilty be vacated on the motion of the defendant, the government may, in its sole discretion, move to reinstate any or all of the counts dismissed pursuant to this agreement.

The government agrees that the defendant should receive a two-level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(a). If the defendant does not engage in prohibited conduct or otherwise implicate USSG § 3C1.1, the government agrees to file a motion requesting that the defendant receive a one level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(b).

As to sentencing, the government agrees to recommend a sentence within the advisory guideline range as calculated in this agreement.

The government agrees that the evidence does not show that he aided and abetted codefendant Russell Foreman in any of the allegations contained in the indictment other than in counts 12 and 13, and the conduct of Russell Foreman should not be considered as relevant conduct for sentencing guideline calculations.

C. Joint Agreement re: calculation of loss/preservation of issue

The parties are aware this court has determined that the appropriate calculation of loss in the codefendant's case is "intended loss" under the Sentencing Guidelines. The government agrees with this basis for loss calculation. The defendant believes the appropriate loss calculation is actual loss. The parties acknowledge this issue is on appeal to the Tenth Circuit in the case of the codefendant. Because the defendant submits the appropriate calculation of loss should be actual loss, the government agrees the defendant has preserved that issue for any appeal and has not waived the issue for any post-judgment proceeding. The government agrees to not argue on appeal, or in any post judgment proceeding, that the defendant has waived the issue.

D. Appellate Waiver

The defendant is aware that 18 U.S.C. § 3742 affords the right to appeal the sentence, including the manner in which that sentence is determined. Understanding this, and in exchange for the concessions made by the government in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence (including the restitution order), unless it meets one of the following criteria:

(1) the sentence exceeds the maximum penalty provided in the statute of conviction, 18 U.S.C. § 371

(2) the sentence exceeds the top end of the advisory guideline range from the Sentencing Guidelines that applies for the defendant's criminal history (as determined by the district court) at a total offense level of 17; or

(3) the government appeals the sentence imposed.

If the first criteria apply the defendant may appeal only the issue of how his sentence exceeds the statutory maximum sentence. But if one of the latter two criteria apply, the defendant may appeal on any ground that is properly available in an appeal that follows a guilty plea.

The defendant also knowingly and voluntarily waives the right to challenge this prosecution, conviction, or sentence (including the restitution order) in any collateral attack (including, but not limited to, a motion brought under 28 U.S.C. § 2255. This waiver provision does not prevent the defendant from seeking relief otherwise available in a collateral attack on any of the following grounds:

(1) the defendant should receive the benefit of an explicitly retroactive change in the sentencing guidelines or sentencing statute;

(2) the defendant was deprived of the effective assistance of counsel; or

(3) the defendant was prejudiced by prosecutorial misconduct.

The Defendant also waives the right to appeal any sentence imposed below or within the Guideline range upon a revocation of supervised release in this case number, except where the defendant unsuccessfully objects to the grade of violation applied by the court during the district court revocation proceedings. In that event, this waiver does not apply, and the defendant may appeal the sentence imposed upon a revocation of supervised release, even if that sentence falls below or within the guideline range calculated by the court.

The Defendant also waives the right to appeal the denial of any motion filed under 18 U.S.C. § 3582(c)(1)(A) where such denial rests in any part upon the court's determination that a sentence reduction is not warranted under the factors set forth in 18 U.S.C. § 3553(a). This waiver does not apply to an appeal of a denied § 3582(c)(1)(A)(i) motion where the district court, in denying the motion on § 3553(a) grounds, failed to consider the facts allegedly establishing extraordinary and compelling circumstances as part of its § 3553(a) analysis.

E. Forfeiture of Assets:

The defendant admits the forfeiture allegations as set forth in the Indictment. The defendant further agrees to forfeit to the United States immediately and voluntarily any interest the defendant may have in any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. §§ 982(a)(1) and 982(a)(8), whether in the possession or control of the United States, or in the possession or control of the defendant or defendant's nominees, or elsewhere. Those assets include but are not limited to: (a) $36,106.22 seized from Citizens Bank account #6268226441 held in the name of Etola L Leipply; (b) $282.49 seized from FanDuel account #11125854 held in the name of Chandler Simbeck; and (c) entry of a money judgment in the amount of $151,000.00. The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of assets. Defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses to the forfeiture of the assets described above, including any claim or defense under the Eighth Amendment to the United States Constitution, and any rights under Fed. R. Crim. P. 32.2.

The defendant admits and agrees that the conduct described in the Stipulation of Facts below provides a sufficient factual and statutory basis to establish that the requisite nexus exists between the specific property subject to forfeiture and the offenses to which defendant is pleading guilty. Pursuant to Fed. R. Civ. P. 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the Court find that the Government has established the requisite nexus and enter a preliminary order of forfeiture.

The United States agrees that any amount realized from the forfeiture of the assets listed above will be credited against the money judgment.

The United States Attorney's Office for the District of Colorado will recommend to the Attorney General that any net proceeds derived from the sale of judicially forfeited substitute assets be remitted or restored to eligible victims of the offenses for which the defendant has pleaded guilty, pursuant to 18 U.S.C. § 981(e), 28 C.F.R. pt. 9, and any other applicable laws, if the legal requirements for recommendation are met. The defendant understands that the United States Attorney's Office only has authority to recommend such relief and that the final decision of whether to grant relief rests solely with the Department of Justice, which will make its decision in accordance with applicable law.

The defendant understands that pursuant to 18 U.S.C. § 983, the seizing agency is required to send notice in non-judicial civil forfeiture matters. Having been advised of said rights regarding notice, the defendant hereby knowingly and voluntarily waives his rights to notice being sent within the time frames in 18 U.S.C. § 983 and to having the property returned to him if notice is not sent within the prescribed time frames.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture, except as otherwise outlined in this agreement.

II. ELEMENTS OF THE OFFENSE(S)

The parties agree that the elements of conspiracy to defraud the United States, in violation of Title 18, United States Code, Section 371, are as follows:[1]

---

1 Authority: 10th Circuit Pattern Jury Instruction 2.19 (2018) combined with 6th Cir Pattern Instruction 6.18.371B. (There is no 10th Cir. Instruction for Conspiracy to defraud US.

First: First: the defendant agreed with at least one other person to defraud the United States;[2]

Second: one of the conspirators engaged in at least one overt act furthering the conspiracy's objective;

Third: the defendant knew the essential objective of the conspiracy;

Fourth: the defendant knowingly and voluntarily participated;

Fifth: there was interdependence among the members of the conspiracy; that is, the members, in some way or manner, intended to act together for their shared mutual benefit within the scope of the conspiracy charged.

III. STATUTORY PENALTIES

The maximum penalties for a violation of Count 12 of the indictment is not more than 5 years' imprisonment; maximum term of supervised release of three years; maximum fine of $250,000 or twice the gain or loss from the offense, or both imprisonment and a fine; $100 mandatory victim's fund assessment fee; restitution of an amount to be determined at the time of sentencing.

IV. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including, but not limited to, the rights to possess firearms, vote, hold elected office, and sit on a jury.

V. STIPULATION OF FACTS

The factual basis for this plea is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense of

---

2 "Defraud the United States," means to cheat the United States government or any of its agencies out of money or property. It also means to obstruct or interfere with one of the United States government's lawful functions, by deceit, craft, trickery, or dishonest means.

conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts that may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from presenting non-contradictory additional facts which are relevant to the Court's guideline computation, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

The parties agree the government would be able to prove the following facts at trial:

Background Related to Pandemic-Related Relief Programs

The United States Small Business Administration ("SBA") is an executive-branch agency of the United States government that provides support to entrepreneurs and small businesses. In or around March 2020, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was enacted to provide emergency financial assistance to the millions of Americans suffering adverse economic effects caused by the COVID-19 pandemic. The CARES Act established several new temporary programs and expanded existing programs, including programs created or administered by the SBA.

The Economic Injury Disaster Loan ("EIDL") program was an SBA program that provided low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters. The CARES Act authorized the SBA to provide EIDLs to eligible small businesses experiencing substantial financial disruptions due to the COVID-19 pandemic. In addition, the CARES Act authorized the SBA to issue advances of up to $10,000 to small businesses, known as Economic Injury Disaster Grants (EIDGs). The amount of the advance was determined by the number of employees the applicant certified having. The advances did not need to be repaid.

To obtain an EIDL and/or EIDG, a qualifying business was required to submit an application to the SBA and provide information about its operations, such as the number of employees and the entity's gross business revenues and cost of goods sold in the twelve months prior to January 31, 2020. The amount of the loan, if approved, was determined based, in part, on the information provided concerning the number of employees, gross revenue, and cost of goods. Any funds issued under an EIDL or EIDG were issued directly by the SBA. EIDL funds were permitted to be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments.

Another source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP"). To obtain a PPP loan, the authorized representative of a business was required to state the business's average monthly payroll expenses and number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. A participating lender would then process the PPP loan application. If the PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were fully guaranteed by the SBA.

The conspiracy and overt acts.

Between in or about June 2020 and on or about December 7, 2020, in the State and District of Colorado and elsewhere, RUSSELL FOREMAN and CHANDLER SIMBECK, did knowingly and unlawfully conspire to defraud the United States and any agency thereof. Overt acts were committed or caused to occur by the defendant and/or by Russell Foreman

Colorado Secretary of State records reflect Fusion Group, LLC was formed on June 25, 2020, by the defendant, Chandler Simbeck. Records of the IRS show that Fusion Group applied for an Employee Identification Number (EIN) on the same date. The EIN application listed Chandler Simbeck as the sole member of Fusion Group LLC. In fact, Fusion Group was never a business engaged in any enterprise of any kind and did not have any revenue or employees.

On June 25, 2020, RUSSELL FOREMAN emailed CHANDLER SIMBECK with the subject line 'Fusion Group' and attached two documents titled: (1) 'Chandler's EIN.pdf' – A letter from the Internal Revenue Service dated June 25, 2020 to Fusion Group / Chandler E Simbeck Sole Mbr with notification that an Employer Identification Number (EIN) has been assigned to Fusion Group; and 2) 'Chandler's LLC.pdf' – The Articles of Organization of Fusion Group which had been filed with the Colorado Secretary of State on June 25, 2020 with a recorded principal office address of 1555 South Havana Street, Unit F #210, Aurora, Colorado 80012; an address used by RUSSELL FOREMAN.

On June 26, 2020, an EIDL application in the name of Fusion Group was submitted to the SBA listing the owner as CHANDLER SIMBECK. Fusion Group's address was listed as 1555 South Havana Street, Unit F #210, Aurora, Colorado 80012. The application contained materially false information concerning the establishment date of the company, the gross revenues and costs of goods sold. On June 28 and June 30, 2020, CHANDLER SIMBECK forwarded to RUSSELL FOREMAN emails from SBA confirming the status of the EIDL application in the name of Fusion Group.

On August 24, 2020, CHANDLER SIMBECK emailed RUSSELL FOREMAN with the subject line "vegisvir articles of incorporation" and attached a document titled "vegisvir_test.pdf". The body of the email was blank. The document attached to the email was a copy of the Articles of Organization for Vegisir Consults LLC. On August 28, 2020, two entities named Vegisir Consults LLC and Vegisir Consults LLC were formed and registered with the Colorado Secretary of State. For both companies, CHANDLER SIMBECK was listed as the Registered Agent and Person Forming the Limited Liability Company.

On August 27, 2020, the Fusion Group EIDL was approved by the SBA and $149,900.00 was deposited into a First National Bank of Pennsylvania held in the name of Fusion Group LLC and controlled by CHANDLER SIMBECK. Between August 31 and September 1, 2020, following the deposit of the funds into the Fusion Group LLC bank account, funds were withdrawn from the account as follows:

1) a $8,000.00 check that was cashed;

2) a $30,000.00 check payable to Vegvisir Consults LLC that was deposited to a PNC Bank account held in the name of Vegvisir Consults LLC and controlled by CHANDLER SIMBECK;

3) a $60,000.00 check payable to Vegisir Consults LLC that was deposited to a Citizens Bank account held in the name of Vegisir Consults LLC and controlled by CHANDLER SIMBECK;

4) a $50,000.00 check payable to Etola Leipply, a relative of CHANDLER SIMBECK, was issued. On October 6, 2020, a $55,000.00 wire transfer from Citizens Bank account in the name of Vegisir Consults LLC was made to the account of RUSSELL FOREMAN at Navy Federal Credit Union.

On December 7, 2020, an $11,000.00 check was drawn on PNC Bank account in the name of Vegvisir Consults LLC was made payable to RUSSELL FOREMAN.

Relevant Conduct

Semi-successful application. On March 30, 2020, a false and misleading EIDL application in the name of CHANDLER SIMBECK was electronically submitted to SBA. The application listed CHANDLER SIMBECK as the owner, was electronically signed by CHANDLER SIMBECK, and the information provided was certified as true and accurate. The application contained materially false information concerning financial information concerning a sole proprietorship of Chandler Simbeck. As a result of the application, on or about April 16, 2020, the SBA funded CHANDLER SIMBECK with a $1,000.00 EIDL Cash Advance Grant.

Unsuccessful EIDL applications. On June 25, 2020, CHANDLER SIMBECK electronically submitted a false and misleading EIDL application in the business name of Jami King to SBA. The application was electronically signed and submitted from an internet protocol address (Ip address) subscribed to the address of Etolla Leipply, the mother of CHANDLER SIMBECK and a location where CHANDLER SIMBECK was residing at the time, and the information provided was certified as true and accurate. The application contained materially false information concerning the establishment date of the company (as March 11, 2019), the gross revenues (as $544,000) and costs of goods sold (as $126,000). In fact, the business was established on June 25, 2020, with the Colorado Secretary of State and had no financial operations. Based on the financial information claimed, the EIDL application sought to obtain an EIDL of $150,000. The application was not funded by SBA.

On June 28, 2020, a false and misleading EIDL application in the business name of Fusion Group, naming CHANDLER SIMBECK as the owner, was electronically submitted to the SBA. The application was electronically certified by CHANDLER SIMBECK and the information provided was certified as true and accurate. The application contained materially false information concerning the establishment date of the company (as February 25, 2019), the gross revenues (as $612,000) and costs of goods sold (as $161,000). In fact, the business was established on June 25, 2020, with the Colorado Secretary of State and had no financial operations. Based on the financial information claimed, the EIDL application sought to obtain an EIDL of $150,000. The application was not funded by SBA.

Unsuccessful PPP loan applications. In addition to the EIDLs described in this section, Chandler Simbeck made three attempts to obtain a PPP loan. On April 30, 2020, a PPP loan application in the name of CHANDLER SIMBECK was submitted by the defendant to Celtic Bank Corporation. The application indicated that CHANDLER SIMBECK had a business which was a sole proprietorship and paid salaries in 2019 of $93,792.00 with an average monthly payroll of $7,816.00 per month. Based upon the formula for such loans, a loan of $ 19,500 was approved but never funded. In fact, CHANDLER SIMBECK only reported a Schedule C on his 2019 Form 1040 filed with the Internal Revenue Service that had gross receipts of $1,800 and a net loss of -$230.

On May 23, 2020, a PPP loan application in the name of CHANDLER SIMBECK was submitted by the defendant to Kabbage, Inc. The application indicated that CHANDLER SIMBECK had a business which was a sole proprietorship and paid salaries in 2019 of $93,800 with an average monthly payroll of $7,816.67 per month. Based upon the formula for such loans, a loan of $ 19,541 was approved but never funded. In support of the application, CHANDLER SIMBECK submitted a false 2019 Schedule C claiming that his sole proprietorship had gross receipts of $112,300 and a net profit of $93,800. In fact, the Schedule C filed with the Internal Revenue Service by CHANDLER SIMBECK with his 2019 Form 1040 only reported gross receipts of $1,800 and net loss of -$230.

On June 22, 2020, the same PPP loan application in the name of CHANDLER SIMBECK was submitted by the defendant to Kabbage, Inc. The application indicated that CHANDLER SIMBECK had a business which was a sole proprietorship and had paid salaries in 2019 of $93,800 with an average monthly payroll of $7,816.67 per month. Based upon the formula for such loans, a loan of $ 19,541 was approved but never funded. In support of the application, CHANDLER SIMBECK submitted a false 2019 Schedule C claiming that his sole proprietorship had gross receipts of $112,300 and a net profit of $93,800. In fact, the Schedule C filed with the Internal Revenue Service by CHANDLER SIMBECK with his 2019 Form 1040 only reported gross receipts of $1,800 and net loss of -$230.

VI. ADVISORY GUIDELINE CALCULATION

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. To aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies the matters which are in dispute.

The Guideline calculation below is the good faith estimate of the parties, but it is only an estimate. The parties understand that the government also has an independent obligation to assist the Court in making an accurate determination of the correct guideline range. To that end, the government may argue that facts identified in the presentence report, or otherwise identified during the sentencing process, affect the estimate below.

a) Under Section 2B1.1(a)(1), the base offense level is **7**.

b) The following specific offense characteristics apply: There is a **12**-level increase pursuant to § 2B1.1(b)(1)(H) because the loss related to the offense of conviction and relevant conduct (including intended loss) was between $250,000 and $550,000.

In the event intended loss is determined to not be an appropriate measure of loss under 2B1.1 by the Tenth Circuit Court of Appeals or by the United States Supreme Court, the parties agree that the actual loss amount is $151,000.00.

c) There are no victim-related, role-in-offense, obstruction, grouping, or multiple-count adjustments.

d) The adjusted offense level is **19.**

e) The parties agree the defendant should receive a 3-level reduction for acceptance of responsibility pursuant to § 3E1.1(a) and(b). The resulting total offense level is **16.**

f) The parties understand that the defendant's criminal history computation is tentative and based on the defendant's prior convictions. The parties believe the defendant is in criminal history category 3.

g) The career offender/criminal livelihood/armed career criminal adjustments do not apply.

h) The advisory guideline range resulting from a level these calculations is 27-33 months. However, to be as accurate as possible, with the criminal history category undetermined at this time, the offense level(s) estimated above could conceivably result in a range from **24** months (bottom of Category I) to **63** months (top of Category VI). The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction.

i) Pursuant to guideline § 5E1.2, assuming the estimated offense level above is correct, the fine range for this offense would be **$10,000 to $95,000**, plus applicable interest and penalties.

j) Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is at least one but not more than three years.

k) The government will seek a restitution order in an amount to be determined prior to sentencing and a final money judgment order for that same amount.

The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.

VII. ENTIRE AGREEMENT

The agreement disclosed to the Court is the entire agreement. There are no other promises, agreements or "side agreements," terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any other terms, promises, conditions or assurances.

Date: 4/21/23

CHANDLER SIMBECK
Defendant

Date: 4-21-23

TYRONE GLOVER
Attorney for Defendant

Date: 4/21/23

ROBERT BROWN
Assistant U.S. Attorney