**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.** 22-80074-CR-RLR

**UNITED STATES OF AMERICA**

**v.**

**OMAR SMITH,**

**Defendant.**
_______________________________________/

## PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida ("this Office") and Omar Smith (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to Count 1 of the Information, which charges the defendant with Conspiracy to Commit Bank Fraud and Wire Fraud, in violation of Title, 18 U.S.C. §1349.

2. The defendant is aware that the sentence will be imposed by the Court after considering the advisory Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and

understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines but is not bound to impose a sentence within that advisory range; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory range. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of thirty (30) years imprisonment, followed by a term of supervised release of up to five (5) years and the Court may order restitution. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to the greater of twice the gross gain or twice the gross loss or $1,000,000.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of $100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing. If the defendant is financially unable to pay the special assessment, the defendant agrees to present evidence to this Office and the Court at the time of sentencing as to the reasons for the defendant's failure to pay.

5. This Office reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the

defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

6. This Office agrees that it will recommend at sentencing that the Court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, this Office will file a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. This Office, however, will not be required to make this motion or this recommendation, if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to, committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

7. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the

defendant may receive, whether that estimate comes from the defendant's attorney, this Office, or the probation office, is a prediction, not a promise, and is not binding on this Office, the probation office or the Court. The defendant understands further that any recommendation that this Office makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 2 above, that the defendant may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

8. The defendant is aware that Title 18, United States Code, Section 3742 and Title 28, United States Code, Section 1291 afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Sections 3742 and 1291 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b) and Title 28, United States Code, Section 1291. However, if the United States appeals the defendant's sentence pursuant to Sections 3742(b) and 1291, the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal waiver set

forth in this agreement with the defendant's attorney.

9. This is the entire agreement and understanding between this Office and the defendant. There are no other agreements, promises, representations, or understandings.

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

Date: 7/7/22 By: ______________________
Jeffrey Kaplan
Assistant United States Attorney

Date: 2/2/22 By: ______________________
Nicole Hamil-Scott
Attorney for Defendant

Date: 2/2/22 By: ______________________
Rogell Levers
Attorney for Defendant

Date: 2/2/22 By: ______________________
Omar Smith
Defendant

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 20-80074-CR-RLR**

**UNITED STATES OF AMERICA**

**v.**

**OMAR SMITH,**

**Defendant.**
______________________________/

**Stipulated Statements of Fact**

The United States of America and OMAR SMITH (hereinafter referred to as "SMITH") enter into the following stipulated statements of fact in support of the defendant's plea of guilty:

Had this case proceeded to trial, the government would have presented evidence by way of testimony of co-conspirators and other witnesses, bank records, and other business records, and other evidence, which would establish that, beginning at least in or about June 2020 and continuing through in or about October 2020, the defendant engaged in a Conspiracy to Commit Bank Fraud and Wire Fraud, in violation of 18 U.S.C. § 1349, as charged in Count 1 of the Information.

**Background**

In or about September 2020, the FBI began an investigation of a Payroll Protection Program (PPP) loan for $212,500 obtained by SMITH. The PPP was created to help certain businesses continue paying their workers during the COVID-19 pandemic. The Paycheck Protection Program allowed entities to apply for low-interest private loans to pay for their payroll and certain other costs. The amount of the PPP loan is based on the average monthly payroll costs of a business between January 1, 2019, and December 31, 2019. The amount of a PPP loan is approximately equal to 2.5 times the applicant's average monthly payroll costs. The loan could be partially or fully forgiven if the business kept its employee counts and employee wages stable.

In or about June 2020, defendant SMITH unlawfully agreed to pay 20% of the PPP loan proceeds to a co-conspirator who would help defendant SMITH obtain the loan. On or about June 1, 2020, defendant SMITH knowingly signed the loan application that was prepared by a co-conspirator. Such PPP loan application for $212,500 was submitted online, by interstate wire communication, to BlueVine, a loan processor. The loan application submitted by defendant SMITH falsely stated that during 2019 defendant SMITH's company, A Star For I, had 30 employees and had an average monthly payroll of $85,000 a month. In support of the loan application, an IRS Form 941 for the first quarter of 2019 prepared by a co-conspirator was submitted online, by interstate wire communication, to BlueVine, falsely stating that A Star For I paid wages of $255,000 and had withheld from those wages federal income tax of $24,040, social security tax of $31,620, and Medicare tax of$7,395.

On or about June 2, 2020, based on the false information provided in the loan application and supporting document, BlueVine approved the loan to A Star For I and Celtic Bank, a federally-insured bank, wire transferred $212,500, via interstate wire communication, to the A Star For I bank account at Capital One, NA. On or about June 10, 2020, defendant SMITH transferred $42,500 to a co-conspirator as payment for obtaining the PPP loan for A Star For I.

From in or about July 2020 through in or about October 2020, defendant SMITH began issuing checks to persons in order to make it appear as if A Star For I had full-time employees and was complying with the conditions of the PPP loan. FBI agents interviewed some of the people who received the checks. They would testify that in or about July or August 2020 they were asked by defendant SMITH or a co-conspirator to "work" for SMITH. The individuals did little, if any, work. On or about May 6, 2021, after being contacted by the FBI, the entire proceeds of the fraudulently obtained loan, plus all accrued interest, was repaid.

This is some of the evidence the government would present if this matter were to proceed to trial. The above-described acts in Count 1 occurred from in or about June 2020 and continuing through in or about October 2020, in Broward County in the Southern District of Florida and elsewhere.

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

Date: 7/7/22

By: Jeffrey Kaplan
Assistant United States Attorney

I have read the Stipulated Statements of Fact set forth above. I believe that the above- stated facts set forth all the elements for the offense of Conspiracy to Commit Bank Fraud and Wire Fraud, in violation of Title 18, United States Code, Section 1349, as charged in Count 1 of the Information. I believe that all the facts set forth in the Stipulated Statements of Fact are true and correct.

Date: 07-07-2022

Omar Smith
Defendant

Date: 7/7/22

Nicole Hamil-Scott

Nicole Hamil-Scott, Esq.
Attorney for the Defendant