EDP:TBM
F. #2020R00998

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

– – – – – – – – – – – – – – – – – – X

UNITED STATES OF AMERICA

- against -

BRYAN ABRAHAM,

Defendant.

– – – – – – – – – – – – – – – – – – X

PLEA AGREEMENT

21 CR 411 (WFK)

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Attorney's Office for the Eastern District of New York (the "Office") and BRYAN ABRAHAM (the "defendant") agree to the following:

1. The defendant will plead guilty to Counts One and Eight of the above-captioned indictment, charging violations of Title 18, United States Code, Sections 1029(b)(2) and 1028A(a)(1), respectively. The counts carry the following statutory penalties:

Count One: Conspiracy to Commit Access Device Fraud

a. Maximum term of imprisonment: 7.5 years (18 U.S.C. §§ 1029(b)(2) and 1029(c)(1)(A)(ii)).

b. Minimum term of imprisonment: 0 years (18 U.S.C. §§ 1029(b)(2) and 1029(c)(1)(A)(ii)).

c. Maximum supervised release term: 3 years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to 2 years without credit for pre-release imprisonment or time previously served on post-release supervision (18 U.S.C. § 3583(b) and (e)).

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d. Maximum fine: Greater of $250,000, or twice the gross gain or twice the gross loss
(18 U.S.C. § 3571(b)(2), (b)(3) and (d)).

e. Restitution: Mandatory in the full amount of each victim's losses as determined by the Court
(18 U.S.C. §§ 3663A and 3664).

f. $100 special assessment
(18 U.S.C. § 3013).

g. Other penalties: Criminal forfeiture, as set forth below in paragraphs 6 through 13
(18 U.S.C. §§ 982(a)(2)(B), 982(b)(1), 1029(c)(1)(C) and 1029(c)(2); 21 U.S.C. § 853(p)).

<u>Count Eight: Aggravated Identity Theft</u>

a. Maximum term of imprisonment: 2 years
(18 U.S.C. § 1028A(a)(1)).

b. Minimum term of imprisonment: 2 years
(18 U.S.C. § 1028A(a)(1)).

c. Maximum supervised release term: 1 year, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to 1 year without credit for pre-release imprisonment or time previously served on post-release supervision
(18 U.S.C. § 3583(b) and (e)).

d. Maximum fine: Greater of $250,000, twice the pecuniary gain or twice the pecuniary loss
(18 U.S.C. § 3571(b)(3) and (d)).

e. Restitution: Mandatory in the full amount of each victim's losses as determined by the Court
(18 U.S.C. §§ 3663A and 3664).

f. $100 special assessment
(18 U.S.C. § 3013).

The sentence imposed on Count Eight must run consecutive to the sentence imposed on Count One. <u>See</u> 18 U.S.C. § 1028A(b)(2).

2. The defendant understands that although imposition of a sentence in accordance with the United States Sentencing Guidelines (the "Guidelines" and "U.S.S.G.") is not mandatory, the Guidelines are advisory and the Court is required to consider any applicable Guidelines provisions as well as other factors enumerated in 18 U.S.C. § 3553(a) to arrive at an appropriate sentence in this case. The Office will advise the Court and the Probation Department of information relevant to sentencing, including criminal activity engaged in by the defendant, and such information may be used by the Court in determining the defendant's sentence. See 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."). The Office estimates the likely adjusted offense level under the Guidelines to be 28, with a mandatory consecutive sentence of imprisonment of 24 months, which is predicated on the following Guidelines calculation:

Count One: Conspiracy to Commit Access Device Fraud

Base Offense Level (§ 2B1.1(a)(2))		6
Plus:	Actual loss of more than $1,500,000 (§§ 2B1.1(b)(1)(I), 1B1.3(a)(1))	+16
Plus:	Involved 10 or more victims (§ 2B1.1(b)(2)(A)(i))	+2
Plus:	Involved conduct described in 18 U.S.C. § 1040 (§ 2B1.1(b)(12))	+2
Plus:	Managerial role (§ 3B1.1(b))	+3
Less:	Global resolution (§ 5K2.0)	-1
Total:		28

<u>Count Eight: Aggravated Identity Theft</u>

Guidelines Range of Imprisonment (§ 2B1.6) 24 months

If the defendant clearly demonstrates acceptance of responsibility, through allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a), resulting in an adjusted offense level of 26 and a range of imprisonment of 63 to 78 months, assuming that the defendant falls within Criminal History Category I. However, because the defendant is also subject to a mandatory consecutive 24-month term of imprisonment on Count Eight, <u>see</u> § 2B1.6, his effective Guidelines range of imprisonment is 87 to 102 months, assuming that the defendant falls within Criminal History Category I. Furthermore, if the defendant has accepted responsibility as described above, to the satisfaction of the Office, and if the defendant pleads guilty on or before ~~October 24, 2022,~~ January 26, 2023 —RMP an additional one-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(b), resulting in an adjusted offense level of 25. This level carries a range of imprisonment of 57 to 71 months, assuming that the defendant falls within Criminal History Category I. However, because the defendant is also subject to a mandatory consecutive 24-month term of imprisonment on Count Eight, <u>see</u> § 2B1.6, his effective Guidelines range of imprisonment is 81 to 95 months, assuming that the defendant falls within Criminal History Category I. The defendant stipulates to the above Guidelines calculation.

3. The Guidelines estimate set forth in paragraph 2 is not binding on the Office, the Probation Department or the Court. If the Guidelines offense level advocated by the Office, or determined by the Probation Department or the Court, is, for any reason, including an error in the estimate, different from the estimate, the defendant will not be entitled to withdraw the plea and the government will not be deemed to have breached this agreement.

4. The defendant agrees not to file an appeal or otherwise challenge, by petition pursuant to 28 U.S.C. § 2255 or any other provision, the conviction or sentence in the event that the Court imposes a term of imprisonment of 102 months or below. This waiver is binding without regard to the sentencing analysis used by the Court. The defendant waives all defenses based on the statute of limitations and venue with respect to any prosecution that is not time-barred on the date that this agreement is signed in the event that (a) the defendant's conviction is later vacated for any reason, (b) the defendant violates this agreement, or (c) the defendant's plea is later withdrawn. The defendant further waives the right to raise on appeal or on collateral review any argument that (1) the statutes to which the defendant is pleading guilty is unconstitutional and (2) the admitted conduct does not fall within the scope of the statutes. Nothing in the foregoing waiver of appellate and collateral review rights shall preclude the defendant from raising a claim of ineffective assistance of counsel in an appropriate forum. The defendant waives any right to additional disclosure from the government in connection with the guilty plea. The defendant agrees that with respect to all charges referred to in paragraphs 1 and 5(a) he is not a "prevailing party" within the meaning of the "Hyde Amendment," 18 U.S.C. § 3006A note, and will not file any claim under that law. The defendant agrees to pay the special assessment by check payable to the Clerk of the Court at or before sentencing.

5. The Office agrees that:

a. no further criminal charges will be brought against the defendant for engaging in the following criminal conduct concerning the New York State Unemployment Insurance Fund: conspiring to commit access device fraud between June 2020 and April 2021 (as charged in Count One of the indictment), committing access device fraud between June 2020 and December 2020 (as charged in Count Two of the indictment), and committing aggravated identity theft between June 2020 and December 2020 (as charged in Count Eight of the indictment), it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 et seq., and at the time of sentence, it will move to dismiss the remaining counts of the indictment with prejudice;

and, based upon information now known to the Office, it will

b. take no position concerning where within the Guidelines range determined by the Court the sentence should fall; and

c. make no motion for an upward departure under the Sentencing Guidelines.

If information relevant to sentencing, as determined by the Office, becomes known to the Office after the date of this agreement, the Office will not be bound by paragraphs 5(b) and 5(c). Should it be judged by the Office that the defendant has violated any provision of this agreement, the defendant will not be released from his plea of guilty but this Office will be released from its obligations under this agreement, including but not limited to: (a) moving for the additional one-level downward adjustment for timely acceptance of responsibility described in paragraph 2 above; and (b) the provisions of paragraphs 5(a)-(c).

6. The defendant acknowledges that he obtained and/or acquired property that is subject to forfeiture as a result of his violation of 18 U.S.C. § 1029(b)(2), as alleged in Count One of the above-captioned indictment. The defendant consents to the entry of a forfeiture money judgment in the amount of five hundred seventy-nine thousand eight hundred sixty-two dollars and zero cents ($579,862.00) (the "Forfeiture Money Judgment"). The defendant further consents to the forfeiture of all right, title and interest in the following assets: (a) nine thousand five hundred sixty-seven dollars and zero cents ($9,567.00) in United States currency, seized from the defendant on or about August 27, 2020 in Brooklyn, New York; and (b) twenty thousand one hundred sixty-three dollars and eighty-seven cents ($20,163.87) in

United States currency, seized from the defendant on or about September 17, 2020 in Brooklyn, New York (collectively, the "Seized Assets"). The forfeiture of the Seized Assets will be credited towards the Forfeiture Money Judgment. The defendant agrees that the Seized Assets, the Forfeiture Money Judgment and any payments toward the Forfeiture Money Judgment represent: (a) property constituting, or derived from, proceeds obtained directly or indirectly as a result of his violation of 18 U.S.C. § 1029(b)(2); (b) personal property used or intended to be used to commit such offense; and/or (c) substitute assets, and thus are forfeitable to the United States pursuant to 18 U.S.C. §§ 982(a)(2)(B), 1029(c)(1)(C), and 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. §§ 982(b)(1) and 1029(c)(2). The defendant acknowledges that the Office, at its sole discretion, may seek to forfeit the Seized Assets and/or the amount of the Forfeiture Money Judgment through commencement of an administrative or civil forfeiture proceeding. The defendant consents to the entry of a Preliminary Order of Forfeiture, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, forfeiting the Seized Assets and imposing the Forfeiture Money Judgment.

7. The Forfeiture Money Judgment shall be paid pursuant to a payment schedule to be determined in connection with the defendant's sentencing (the "Payment Schedule"). All payments made by the defendant toward the Forfeiture Money Judgment shall be made by money order, certified check and/or official bank check, payable to the "U.S. Marshals Service." The defendant shall cause said payment(s) to be sent by overnight mail delivery to Assistant United States Attorney Brendan King, United States Attorney's Office, Eastern District of New York, 271A Cadman Plaza East, Brooklyn, New York 11201, with the criminal docket number noted on the face of the instrument. The defendant consents to the

restraint of all payments made toward the Forfeiture Money Judgment. The defendant also waives all statutory deadlines, including but not limited to deadlines set forth in 18 U.S.C. § 983.

8. If the defendant fails to surrender and forfeit the Seized Assets, or fails to pay any portion of the Forfeiture Money Judgment pursuant to the Payment Schedule, the defendant consents to the forfeiture of any other property of his up to the amount of the Seized Assets and/or the unpaid Forfeiture Money Judgment, pursuant to 21 U.S.C. § 853(p), and further agrees that the conditions of 21 U.S.C. § 853(p)(1)(A)-(E) have been met.

9. The defendant agrees to fully assist the Office in effectuating the surrender and forfeiture of the Seized Assets to the United States and payment of the Forfeiture Money Judgment by, among other things, executing any documents necessary to effectuate any transfer of title to the United States. The defendant agrees not to file a claim or petition seeking remission or contesting the forfeiture of the Seized Assets or any property against which the Office seeks to satisfy the Forfeiture Money Judgment in any administrative or judicial (civil or criminal) proceeding. The defendant further agrees not to assist any person or entity in the filing of any claim or petition seeking remission or contesting the forfeiture of the Seized Assets or any property against which the Office seeks to satisfy the Forfeiture Money Judgment in any administrative or judicial (civil or criminal) forfeiture proceeding.

10. The failure of the defendant to forfeit any monies and/or properties as required under this agreement, including the failure of the defendant to execute any document to accomplish the same on timely notice to do so, may constitute a material breach of this agreement. Upon such a breach, the defendant will not be entitled to withdraw the plea, but the Office may bring additional criminal charges against the defendant.

11. The defendant represents that he will disclose all of his assets to the Office on the financial statement entitled "United States Department of Justice Financial Statement" (hereinafter, the "Financial Statement") two weeks prior to his change of plea hearing, and will provide a copy to Assistant United States Attorney Tara McGrath. The defendant agrees that a failure to disclose all assets on the Financial Statement and to inform the Office in writing of any material changes up until the time of sentencing constitutes a material breach of this agreement. Upon such a breach, the defendant will not be entitled to withdraw the plea, but the Office may bring additional criminal charges against the defendant. Should undisclosed assets which the defendant owns or in which the defendant has an interest be discovered, the defendant knowingly and voluntarily waives his right to any required notice concerning the forfeiture of said assets and agrees that said assets shall be forfeited to the United States pursuant to 18 U.S.C. §§ 982(a)(2)(B), 982(b)(1), 1029(c)(1)(C) and 1029(c)(2), and 21 U.S.C. § 853(p), as (a) property constituting, or derived from, proceeds obtained directly or indirectly as a result of his violation of 18 U.S.C. § 1029(b)(2); (b) personal property used or intended to be used to commit such offense; and/or (c) as substitute assets.

12. The defendant knowingly and voluntarily waives his right to any required notice concerning the forfeiture of any monies and/or properties forfeited hereunder, including notice set forth in an indictment, information or administrative notice, including notice under 18 U.S.C. § 983. In addition, the defendant knowingly and voluntarily waives his right, if any, to a jury trial on the forfeiture of the Seized Assets and/or entry of the Forfeiture Money Judgment, and waives all constitutional, legal and equitable defenses to the forfeiture of said monies and/or properties, including, but not limited to, any defensed based on principles of double jeopardy, the

Ex Post Facto clause of the Constitution, any applicable statute of limitations, venue or any defense under the Eighth Amendment, including a claim of excessive fines.

13. The defendant agrees that forfeiture of the Seized Assets and the entry and payment of the Forfeiture Money Judgment are not to be considered a payment of a fine, penalty, restitution loss amount or any income taxes that may be due, and shall survive bankruptcy.

14. This agreement does not bind any federal, state or local prosecuting authority other than the Office, and does not prohibit the Office from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the defendant.

15. This agreement is conditioned upon the following: (a) the defendants listed below (the "covered defendants") entering guilty pleas, pursuant to plea offers on or before
RMP March 3, 2023
~~October 24, 2022~~, and (b) acceptance of those pleas by a United States District Court Judge at the time of the plea allocution. The covered defendants are:

a. Bryan Abraham;

b. Angel Cabrera;

c. Armani Miller;

d. Gianni Stewart; and

e. Carlos Vazquez

If fewer than all of the covered defendants satisfy conditions (a) and (b), or if any of the covered defendants subsequently seeks to withdraw his guilty plea, the Office, in its sole discretion, may elect to void any or all of the covered defendants' plea agreements and proceed to trial. The Office may also elect not to recommend a reduction under the Guidelines for a global disposition pursuant to U.S.S.G. § 5K2.0. No covered defendant will have the right to withdraw his guilty plea in any of those circumstances.

16. Apart from any written proffer agreements, if applicable, no promises, agreements or conditions have been entered into by the parties other than those set forth in this agreement and none will be entered into unless memorialized in writing and signed by all parties. Apart from any written proffer agreements, if applicable, this agreement supersedes all prior promises, agreements or conditions between the parties. To become effective, this agreement must be signed by all signatories listed below.

Dated: Brooklyn, New York
January 24, ~~2022~~ 2023

BREON PEACE
Acting United States Attorney
Eastern District of New York

By: ______________________
~~Tara McGrath~~ Robert M. Pollack
Assistant United States Attorney

Approved by:

____
Supervising Assistant U.S. Attorney

I have read the entire agreement and discussed it with my attorney. I understand all of its terms and am entering into it knowingly and voluntarily.

____
BRYAN ABRAHAM
Defendant

Approved by:

____
Benjamin Yaster, Esq.
Counsel to Defendant