UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	**Case No. 4:22-cr-114**
	)	
DENNIS KINCHEN	)	

PLEA AGREEMENT

Defendant Dennis Kinchen, represented by his counsel, Skye Musson, Esq., and the United States of America, represented by Assistant United States Attorney Marcela C. Mateo, respectfully state to this Honorable Court that they have reached a plea agreement in this case. The terms and conditions of that agreement are as follows:

1. GUILTY PLEA

Defendant agrees to enter a plea of guilty to the lesser-included offense contained in Count 1 of the Indictment, which charges a violation of 21 U.S.C. § 846, and to Count 11 of the Indictment, which charges a violation of 18 U.S.C. §1956(h).

2. ELEMENTS AND FACTUAL BASIS

The elements necessary to prove the lesser-included of Count 1 are: (1) that two or more people in some way agreed to try to accomplish a shared and unlawful plan to possess 500 grams or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II controlled substance, a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, a mixture or substance containing a detectable amount of heroin, a

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Schedule I controlled substance, a mixture or substance containing a detectable amount of marijuana, a Schedule I controlled substance; (2) that the Defendant knew the unlawful purpose of the plan and willfully joined in it; and (3) that the object of the unlawful plan was to possess with the intent to distribute and distribute the controlled substance.

The elements necessary to prove Count 11 are: (1) that two or more people some way agree to try and accomplish a shared and unlawful plan to engage in money laundering; and (2) the Defendant knew about the plan's unlawful purpose and voluntarily joined it.

Defendant agrees that he is, in fact, guilty of these offenses. Defendant admits that the Government could prove each and every element of the offenses to which he is pleading guilty. He agrees to the accuracy of the following facts, which satisfy each of the offenses' required elements:

Beginning on a date at least as early as April 2019, up to and including the return date of this indictment, the precise dates being unknown, in Chatham, Laurens counties, within the Southern District of Georgia, and elsewhere, the Defendant, DENNIS KINCHEN, aided and abetted by the co-defendants and others known and unknown, did knowingly and intentionally agree with one or more people to accomplish a shared and unlawful plan to possesses with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II controlled substance, a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, a mixture or substance containing a detectable amount of heroin, a Schedule I controlled

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substance, a mixture or substance containing a detectable amount of marijuana, a Schedule I controlled substance. All in violation of Title 21, United States Code, Sections 841(a)(1) and 846 and Title 18, United States Code, Section 2.

Beginning as early as April 2019, law enforcement was investigating the drug trafficking activities of DENNIS KINCHEN and others in the Southern District of Georgia. The investigation revealed that KINCHEN was the source of supply for the drug trafficking organization and distributed cocaine, heroin, methamphetamine and marijuana to co-defendants and others.

KINCHEN communicated with multiple co-conspirators on interception phone lines about trucking business and then about narcotics distribution. KINCHEN speaks to his source of supply in September 2020, which would later be identified as AMARAL and trips would then be tracked and monitored to Hollywood, Florida, through active interception on multiple phone lines.

A search warrant was executed on KINCHEN's residence resulted in the seizure of multiple kilos of cocaine, grams of heroin and pounds of marijuana.

A search warrant executed on a residence associated with KINCHEN on January 29, 2022, in Chatham County, resulted in the seizure of three firearms, cocaine, heroin, and methamphetamine.

Further, on or about September 21, 2021, in the Southern District of Georgia, and elsewhere, the Defendant, **DENNIS RODRIGUEZ KINCHEN,** aided and abetted by each other and by others known and unknown, with some joining the conspiracy earlier and others joining later, did knowingly and intentionally combine, conspire, confederate and agree with each other and others, to conduct and attempt

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to conduct financial transactions affecting interstate commerce, with funds which were proceeds of a specified unlawful activity, that is conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1341.

In furtherance of the conspiracy, the defendant committed and caused to be committed in the Southern District of Georgia and elsewhere, financial transactions affecting interstate commerce, using funds which were, and which the defendant knew to be, proceeds of the unlawful conspiracy to commit wire fraud, through the transactions limited below:

a. On or about September 21, 2021, the SBA deposited $412,700 into Morris Bank account number 94595, held in the name of INFINITY TRUCKING COMPANY, LLC.

b. Prior to receiving the $412,700 in SBA funds the statement balance of Morris Bank account #94595 was only $4,722.68.

c. Following this deposit, on October 21, 2021, the defendant conducted a wire transfer in the amount of $325,000 from Morris Bank account #94595 to Colony Bank account number #8218 held in the name INFINITY TRUCKING CO LLC. Documentation for this wire transfer stated that the purpose for the transfer is "Purchase Property."

d. Prior to the receipt of this wire transfer, bank records indicated account number #8218 had a balance of only $3,905.53. Following this, on October 22, 2021, the records show an outgoing wire transfer to a law firm in the amount of $25,000.

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e. On October 25, 2021, a Colony Bank "Miscellaneous Form" was utilized to conduct a transfer in the amount of $300,000. On the form a handwritten note reads, "transfer to cd #213026794 loan collateral per Dennis Kinchen." This "Miscellaneous Form" also purports to be signed by KINCHEN.

f. On this same date, October 25, 2021, KINCHEN was also issued a check from Colony Bank for the amount of $300,000. The back of this check shows that it was specially endorsed by KINCHEN in the following manner: "Pay to the order of Infinity Trucking Co LLC." The bank's internal transaction stamps show, however, that this check was not deposited into Colony Bank account number #8218 until October 26, 2021; after the purchase of the CD on October 25, 2021. Furthermore, these Colony Bank records included a separate "Miscellaneous Form," which is also dated October 25, 2021, which included the handwritten description "loan fees xx8692 (POC)" and which also purports to be signed by KINCHEN.

g. These records corroborate the belief that the funds used to purchase CD #213026794 were the SBA funds that KINCHEN transferred from his account at Morris Bank (account #94595).

h. Additionally, on November 3, 2021, a cash deposit in the amount of $6,500 was made into Colony Bank account #8218. The next day, on November 4, 2021, Colony Bank records detail an outgoing wire transfer to another law firm in the amount of $306,380.72.

i. An internet search of the above referenced law firm shows that they are located in the Atlanta, Georgia area, and specializes in only four areas, including residential real estate closings. A search of the Fulton County, Georgia's Board of

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Assessors website revealed a property record in the name of Dennis KINCHEN for property located at 2734 Peachtree Rd NW, Unit #C202. The property record further shows that the sale to KINCHEN took place on November 5, 2021.

j. The Government believes that this residential property was purchased with money traceable to and/or derived from Wire Fraud and subsequent misuse of SBA COVID EIDL loan funds as well as through the use of comingled illicit proceeds.

All done in violation of Title 18, United States Code, Section 1956(h).

3. **POSSIBLE SENTENCE**

Defendant's guilty plea to the lesser offense of Count 1 will subject him to the following maximum possible sentence: Imprisonment of not more than 40 years, a supervised release term of at least 4 years, and a $5,000,000 fine. Defendant's guilty plea will subject him to a mandatory minimum of 5 years imprisonment.

Defendant's guilty plea to Count 11 will subject him to the following maximum possible sentence: Imprisonment of not more than 20 years; a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater; and a supervised release term of not more than 3 years. The Court additionally must impose a $100 special assessment as to each count.

4. **NO PROMISED SENTENCE**

No one has promised Defendant that the Court will impose any particular sentence or a sentence within any particular range. The Court is not bound by any estimate of sentence given or recommendations made by Defendant's counsel, the Government, the U.S. Probation Office, or anyone else. The Court may impose a

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sentence up to the statutory maximum. Defendant will not be allowed to withdraw his plea of guilty if he receives a more severe sentence than he expects.

5. COURT'S USE OF GUIDELINES

The Court is obligated to use the United States Sentencing Guidelines to calculate the applicable guideline range for Defendant's offense and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), in determining his sentence. The Sentencing Guidelines are advisory; the Court is not required to impose a sentence within the range those Guidelines suggest. The Sentencing Guidelines are based on all of Defendant's relevant conduct, pursuant to U.S.S.G. § 1B1.3, not just the facts underlying the particular Count to which Defendant is pleading guilty.

6. AGREEMENTS REGARDING SENTENCING GUIDELINES

a. *Acceptance of Responsibility*

If the Court determines that Defendant qualifies for an adjustment under U.S.S.G. § 3E1.1(a), and the offense level prior to operation of § 3E1.1(a) is 16 or greater, the government will move for an additional one-level reduction in offense level pursuant to Section 3E1.1(b) based on Defendant's timely notification of the Defendant's intention to enter a guilty plea.

b. *Use of Information*

The Government is free to provide full and accurate information to the Court and U.S. Probation Office for use in calculating the applicable Sentencing Guidelines range.

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c. *Quantity of Drugs*

The Government and Defendant agree to recommend to the U.S. Probation Office and the Court at sentencing that, for purposes of Section 2D1.1 of the Sentencing Guidelines, the offense involved at least 3,000 kilograms but less 10,000 kilograms of converted drug weight.

d. *Specific Offense Characteristics*

The Government and Defendant agree that a factual basis exists to support a specific offense characteristic that a dangerous weapon, specifically a firearm, was possessed as part of the drug-trafficking crime pursuant to U.S.S.G. §2D1.1. Thus, a 2 level enhancement is applicable.

7. COOPERATION

a. Complete and Truthful Cooperation

If the Defendant chooses to cooperate, the Defendant understands that he must provide full, complete, candid, and truthful cooperation in the investigation and prosecution of the offenses charged in Defendant's Indictment and any related offenses. Defendant shall fully and truthfully disclose Defendant's knowledge of those offenses and shall fully and truthfully answer any question put to him by law enforcement officers about those offenses.

This agreement does not require Defendant to "make a case" against any particular person. Defendant's benefits under this agreement are conditioned only on Defendant's cooperation and truthfulness, not on the outcome of any trial, grand jury, or other proceeding.

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b. *Motion for Reduction in Sentence Based on Cooperation*

The Government, in its **sole discretion**, will decide whether Defendant's cooperation qualifies as "substantial assistance" pursuant to U.S.S.G. § 5K1.1 or Fed. R. Crim. P. 35 and thereby warrants the filing of a motion for downward departure or reduction in Defendant's sentence. If such a motion is filed, the Court, in its sole discretion, will decide whether, and to what extent, Defendant's sentence should be reduced. The Court is not required to accept any recommendation by the government that the Defendant's sentence be reduced.

8. FINANCIAL OBLIGATIONS AND AGREEMENTS

a. *Special Assessment*

Defendant agrees to pay a special assessment in the amount of $100.00 per count, payable to the Clerk of the United States District Court, which shall be due immediately at the time of sentencing.

b. *Required Financial Disclosures*

Not later than 30 days after the Defendant enters a guilty plea, Defendant shall complete a financial disclosure form listing all his assets and financial interests, whether held directly or indirectly, solely or jointly, in his name or in the name of another. Defendant shall sign the financial disclosure form under penalty of perjury and provide that form to the Financial Litigation Unit of the United States Attorney's Office and to the United States Probation Office. Defendant authorizes the United States to obtain credit reports on Defendant and to share the contents of those reports with the Court and the United States Probation Office. Defendant also authorizes

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the United States Attorney's Office to inspect and copy all financial documents and information held by the United States Probation Office.

c. *Financial Examination*

Defendant will submit to an examination under oath on the issue of his financial disclosures and assets if deemed necessary by the United States. Such examination will occur not later than 30 days after the entry of Defendant's guilty plea.

d. *Forfeiture*

The Defendant acknowledges that he obtained and/or acquired property that is subject to forfeiture as a result of his violations of the offenses charged in Counts 1 and 11 of the above-captioned Indictment, as well as his violations of 18 U.S.C. §§ 1341 and 1343. The Defendant consents to the forfeiture of all right, title and interest in the real property located at 2734 Peachtree Rd NW, Unit #C202, Atlanta, GA 30305 (the "Atlanta Condo"), pursuant to 18 U.S.C. § 981(a)(1)(A), as real property involved in a transaction or attempted transaction in violation of section 18 U.S.C. § 1956; and/or, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). as property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of violations of 18 U.S.C. §§ 1341 and 1343, and/or as substitute assets, pursuant to 21 U.S.C. § 853(p). 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 Atlanta Condo. Further, the defendant consents to the forfeiture of the Atlanta Condo in the civil forfeiture action (the "Civil

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Forfeiture Action"), *United States v. 2734 Peachtree Rd NW, Unit #C202 Atlanta, GA 30305*, 4:22-cv-00064-JRH-CLR (S.D.Ga.).

The Defendant admits to each of the allegations set forth in the Verified Complaint in the Civil Forfeiture Action, Dckt. No. 1. Further, the Defendant agrees to fully assist the Government in effectuating the surrender and forfeiture of the Atlanta Condo in the Civil Forfeiture Action, and to take whatever steps are necessary to ensure that clear title passes to the United States, including by providing any information and/or evidence upon request of the government, including testimony and any documentary evidence. The Defendant agrees not to file a claim or petition seeking remission or contesting the forfeiture of the Atlanta Condo in any administrative or judicial (civil or criminal) proceeding, including the Civil Forfeiture Action, and 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 Atlanta Condo in any administrative or judicial (civil or criminal) forfeiture proceeding, including the Civil Forfeiture Action. Further, if any third party files a claim to the Atlanta Condo, including any claim in the Civil Forfeiture Action, the defendant will assist the government in defending such claim. The Defendant also waives all statutory deadlines to the forfeiture, including but not limited to deadlines set forth in 18 U.S.C. § 983.

The failure of the Defendant to forfeit any monies and/or properties as required under this agreement and to assist the government with the forfeiture of the Atlanta Condo, including the failure of the Defendant to providing any information and/or evidence as outlined above, may constitute a material breach of this agreement. Upon

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such a breach, the defendant will not be entitled to withdraw the plea, but the Office may bring additional criminal charges against the defendant.

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, civil complaint or administrative notice. In addition, the Defendant knowingly and voluntarily waives his right, if any, to a jury trial on the forfeiture of the Atlanta Condo, and waives all constitutional, legal and equitable defenses to the forfeiture of said monies and/or properties, including, but not limited to, any defenses 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.

The Defendant agrees that the forfeiture of the Atlanta Condo is 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.

e. *No Transfer of Assets*

Defendant certifies that he has made no transfer of assets in contemplations of this prosecution for the purpose of evading or defeating financial obligations [*or forfeiture]* created by this Agreement or that may be imposed upon him by the Court at sentencing. Defendant promises that he will make no such transfers in the future.

f. *Material Change in Circumstances*

Defendant agrees to notify the United States of any material change in circumstances, as described in 18 U.S.C. § 3664(k), that occurs prior to sentencing in

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this case. Such notification will be made within seven (7) days of the event giving rise to the changed circumstances, and in no event later than the date of sentencing.

g. *Enforcement*

Any payment schedule imposed by the Court is without prejudice to the United States to take all actions and remedies available to it to collect the full amount of the financial obligations imposed by the judgment of the Court in this case. Defendant understands and agrees that the financial obligations *[and forfeiture]* imposed by the judgment of the Court in this case will be placed on the Treasury Offset Program so that any federal payment that Defendant receives may be offset and applied to the judgment debt without regard to or affecting any payment schedule imposed by the Court.

9. **WAIVERS**

a. *Waiver of Appeal*

Defendant entirely waives Defendant's right to a direct appeal of Defendant's conviction and sentence on any ground (including any argument that the statute to which the Defendant is pleading guilty is unconstitutional or that the admitted conduct does not fall within the scope of the statute). The only exceptions are that the Defendant may file a direct appeal of Defendant's sentence if (1) the court enters a sentence above the statutory maximum, (2) the court enters a sentence above the advisory Sentencing Guidelines range found to apply by the court at sentencing; or (3) the Government appeals the sentence. Absent those exceptions, Defendant explicitly and irrevocably instructs Defendant's attorney not to file an appeal.

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b. *Waiver of Collateral Attack*

Defendant entirely waives Defendant's right to collaterally attack Defendant's conviction and sentence on any ground and by any method, including but not limited to a 28 U.S.C. § 2255 motion. The only exception is that Defendant may collaterally attack Defendant's conviction and sentence based on a claim of ineffective assistance of counsel.

c. *FOIA and Privacy Act Waiver*

Defendant waives all rights, whether asserted directly or through a representative, to request or receive from any department or agency of the United States any record pertaining to the investigation or prosecution of this case under the authority of the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, and all subsequent amendments thereto.

d. *Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 Waiver*

Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence ordinarily limit the admissibility of statements made by a defendant during the course of plea discussions or plea proceedings. Defendant knowingly and voluntarily waives the protections of these rules. If Defendant fails to plead guilty, or his plea of guilty is later withdrawn, all of Defendant's statements in connection with this plea, and any leads derived therefrom, shall be admissible for any and all purposes.

10. DEFENDANT'S RIGHTS

Defendant has the right to be represented by counsel, and if necessary have the court appoint counsel, at trial and at every other critical stage of the proceeding.

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Defendant possesses a number of rights which he will waive by pleading guilty, including: the right to plead not guilty, or having already so pleaded, to persist in that plea; the right to a jury trial; and the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

11. **SATISFACTION WITH COUNSEL**

Defendant has had the benefit of legal counsel in negotiating this agreement. Defendant believes that his attorney has represented him faithfully, skillfully, and diligently, and he is completely satisfied with the legal advice given and the work performed by his attorney.

12. **BREACH OF PLEA AGREEMENT**

Defendant breaches this agreement if, prior to sentencing in his case, he fails to comply with any of the terms of this agreement, withdraws or attempts to withdraw his guilty plea, refuses to accept responsibility for his criminal conduct, obstructs justice by tampering with witnesses or evidence, or commits any new crimes. If Defendant breaches the plea agreement, the government is released from any agreement herein regarding the calculation of the advisory Sentencing Guidelines or the appropriate sentence. In addition, the Government may: (1) declare the plea agreement null and void, (2) reinstate any counts that may have been dismissed pursuant to the plea agreement, and/or (3) file new charges against Defendant that might otherwise be barred by this plea agreement. Defendant waives any statute-of-limitations or speedy trial defense to prosecutions reinstated or commenced under this paragraph.

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13. **ENTIRE AGREEMENT**

This agreement contains the entire agreement between the Government and Defendant. The Government has made no promises or representations except those set forth in writing in this Plea Agreement. The Government further denies the existence of any other terms or conditions not stated herein. No other promises, terms or conditions will be entered into unless they are in writing and signed by all the parties.

DAVID H. ESTES
UNITED STATES ATTORNEY

Date

Patricia G. Rhodes
Chief, Criminal Division

12·19·2022
Date

Marcela C. Mateo
Assistant United States Attorney

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I have read and carefully reviewed this agreement with my attorney. I understand each provision of this agreement, and I voluntarily agree to it. I hereby stipulate that the factual basis set out therein is true and accurate in every respect.

12-15-22
Date

Dennis Kinchen
Dennis Kinchen, Defendant

I have fully explained to Defendant all of his rights, and I have carefully reviewed each and every part of this agreement with him. I believe that he fully and completely understands it, and that his decision to enter into this agreement is an informed, intelligent, and voluntary one.

12/15/22
Date

Skye Musson, Defendant's Attorney

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