IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 21-cr-175-WJM

UNITED STATES OF AMERICA

Plaintiff,

v.

1. MICHAEL LAIN,

Defendant,

PLEA AGREEMENT AND STATEMENT OF FACTS RELEVANT TO SENTENCING

The United States of America, by and through Pegeen D. Rhyne and Patricia Davies, Assistant United States Attorneys for the United States Attorney's Office for the District of Colorado (the "government"), and the defendant, Michael Lain ("Lain" or the "defendant"), personally and by counsel, Sabra Barnett and Joey Hamby, 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 waive indictment and plead guilty to a single-count Information,

Court Exhibit

1

charging a violation of 18 U.S.C. § 1343 (wire fraud);

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

(3) to be liable for restitution to the SBA and Comerica Bank California in the amount of $4,433,837.59 with further details regarding the apportionment of the restitution to be provided at sentencing;

(4) to pay $600,000 toward restitution at or before the time of sentencing.

(5) not to contest forfeiture as more fully described below; and

(6) to pay the $100 special monetary assessment applicable to this count at or before the time of sentencing.

B. The Government's Obligations:

This agreement is made pursuant to Fed.R.Crim.P.11(c)(1)(A). The government agrees not to bring other charges against the defendant based on information currently known to the United States Attorney's Office, District of Colorado concerning fraud against the government programs described below. Should the plea of guilty be vacated on the motion of the defendant, the government may, in its sole discretion, file an indictment with additional charges.

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).

The government agrees to recommend a sentence at the low-end of the applicable guideline range for the criminal history calculated by the Court at sentencing and a total offense level of 22.

C. Defendant's Waiver of Appeal:

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. § 1343;

(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 22; or

(3) the government appeals the sentence imposed.

If any of these three 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.

D: Forfeiture of Assets:

The defendant admits the forfeiture allegations. The defendant further agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), whether in the possession or control of the United States, the defendant, the defendant's nominees, or elsewhere. The assets to be forfeited specifically include, but are not limited to: a money judgment in the amount of $4,138,937.59. The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant further agrees to the forfeiture of any substitute assets up to the value of any property described above pursuant to 21 U.S.C. § 853(p) and Federal Rules of Criminal Procedure 32.2(e).

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.

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 the judicially forfeited assets be remitted or restored to eligible victims of the offense, 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.

II. ELEMENTS OF THE OFFENSE

The parties agree that the elements of the wire fraud offense charged in the single-count Information are as follows:

A. The defendant devised a scheme to defraud;

B. The defendant acted with specific intent to defraud;

C. The defendant used, or caused another person to use, interstate or foreign wire communications facilities for the purpose of carrying out the scheme; and

D. The scheme employed false or fraudulent pretenses, representations, or promises that were material.[1]

III. STATUTORY PENALTIES

The maximum statutory penalty for a violation of 18 U.S.C. § 1343 is: not more than 20 years of imprisonment, a fine of not more than the greater of $250,000 or twice the gain or loss from the offense, or both; not more than 3 years of supervised release; a $100 special assessment fee; plus $4,433,837.59 in restitution.

IV. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including, but not limited to, the

[1] Tenth Circuit Pattern Jury Instructions (Criminal Cases), 2011, § 2.57 (updated 2018).

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 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 stipulate that the following facts are true and correct.

On March 27, 2020, the President of the United States signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provided emergency assistance, administered by the United States Small Business Administration (SBA), to small business owners affected by the Coronavirus (COVID-19) pandemic. The two sources of funding for small businesses were the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loans (EIDL) program. The CARES Act mandated that only businesses in operation before February 1, 2020, were eligible under the EIDL program. Under the EIDL program, a small business could receive a loan in an amount of up to six months of working capital with a maximum of $150,000 during all times relevant to this plea agreement. The SBA determined the amount of the loan for which each small business was eligible based, in part, on the amount of gross revenues and cost of goods sold for the business set forth in the EIDL application. The CARES Act also allowed eligible businesses submitting EIDL applications to request in the same application an advance grant of up to $10,000, which was frequently provided based on a $1,000-per-employee basis up to the $10,000 maximum.

From March 2020 through in or about the end of June 2020, defendant Michael Lain knowingly and with the intent to defraud submitted fraudulent EIDL applications to the SBA on behalf of more than 70 LLCs seeking both loans and grants from the program. 70 of those EIDL applications were approved and funded by the SBA. As a result of those 70 fraudulent EIDL applications, LLCs controlled by Lain received $3,830,400 in EIDL proceeds and $336,000 in Economic Injury Disaster Grant (EIDG) proceeds.

In at least 59 of those EIDL applications, Lain knowingly and with the intent to defraud made false statements about the number of employees each LLC had as of January 31, 2020. In all of those EIDL applications, Lain knowingly and with the intent to defraud made false statements about the amount of gross revenues and cost of goods sold that each LLC had in the 12 months prior to January 31, 2020. In all of the applications, Lain falsely certified that these statements were true and correct under the penalties of perjury. In fact, as Lain well knew, none of the 70 LLCs was a company with any employees or any gross revenue or cost of goods sold in the 12 months prior to January 31, 2020. Additionally, in connection with each of the 70 loans, Lain signed a Loan Authorization and Agreement. In all of those documents, Lain falsely agreed to "use all proceeds of this Loan solely as working capital to alleviate economic injury caused by the disaster occurring in the month of January 31, 2020 and continuing thereafter and to pay Uniform Commercial Code (UCC) lien filing fees and a third-party UCC handling charge of $100 which will be deducted from the Loan amount." In fact, as Lain had intended when he signed and submitted each of the EIDL applications, Lain used the EIDL proceeds for other purposes, including using the funds toward the purchase of a new home.

On June 20, 2020, Lain knowingly and with the intent to defraud submitted a fraudulent EIDL application to the SBA on behalf of Ramnauxtly PMB 304, LLC seeking a loan and a grant of up to $10,000. On that application, in order to create the false impression that Ramnauxtly PMB 304, LLC was a company that was active and in operation in the year prior to January 31, 2020, Lain falsely stated that Ramnauxtly PMB 304, LLC: (1) had 7 employees as of January 31, 2020; (2) gross revenues of $325,500 in the 12 months prior to January 31, 2020; and (3) cost of goods sold of $106,250 in the 12 months prior to January 31, 2020. In fact, and as Lain well knew, Ramnauxtly PMB 304, LLC had no employees as of January 31, 2020, and had no gross revenues or cost of goods sold in the 12 months prior to January 31, 2020. In response to this fraudulent EIDL application, the SBA approved and funded a loan of $116,200 and a grant of $7,000 to Ramnauxtly PMB 304, LLC. **Interstate wire:** On June 26, 2020, the SBA in Denver, Colorado created and certified the payment file for this loan to Ramnauxtly PMB 304, LLC and transmitted it via interstate wire communications from Colorado to the U.S. Treasury processing site located in the Kansas City Regional Operations Center in Kansas City, Missouri. After a computer operator at the U.S. Treasury disbursing office in Kansas City, Missouri performed payment operations to complete the processing of the file, an Automated Clearing House (ACH) payment file was transmitted to the Federal Reserve Bank ACH processing site in New Jersey. The Federal Reserve Bank in New Jersey processed the payment file and sent $116,100 to Comerica Bank California in Michigan with Ramnauxtly PMB 304, LL designated as the payee.

On March 23, 2021, Lain paid $27,462.41 to the SBA to repay seven of these fraudulently obtained EIDL loans. At that time, Lain had already been contacted by investigators regarding his EIDL applications in that United States Secret Service agents interviewed Lain and his wife about the applications on February 16, 2021.

In addition to the fraudulent EIDL applications, Lain also submitted to the SBA several fraudulent PPP applications. For purposes of this plea agreement, this PPP fraud is viewed as distinct from Lain's scheme to defraud the United States and the SBA through the EIDL program. However, Lain voluntarily agrees to repay the $294,900 in PPP funds that he fraudulently obtained as part of his court-ordered restitution in this case.

Lain agrees that his restitution obligation includes $4,166,400 for the EIDL loans and grants that he fraudulently obtained as part of his scheme and $294,900 in fraudulently obtained PPP funds with a credit for $27,462.41 in repayments for a total restitution amount of $4,433,837.59. Further details regarding how this restitution obligation shall be apportioned between the SBA and Comerica Bank California will be provided prior to sentencing.

VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the particular 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. In order 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. The base guideline is § 2B1.1, with a base offense level of 7. § 2B1.1(a)(1).

B. An 18-level enhancement applies because the loss was more than $3,500,000 but less than $9,500,000. §2B1.1(b)(1)(J).

C. The adjusted offense level is 25.

D. The defendant should receive a 3-level downward adjustment for timely acceptance of responsibility. The resulting total offense level is 22. § 3E1.1(a)-(b).

E. The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions. Based on information currently available to the parties, it is estimated that the defendant's criminal history category would be I.

F. The career offender/criminal livelihood/armed career criminal adjustments would not apply.

G. The advisory guideline range resulting from these calculations is 41-51 months. However, in order 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 41 months (bottom of Category I) to 105 months (top of Category VI). The guideline range would not exceed, in any case, the statutory maximum applicable to the count of conviction.

H. Pursuant to guideline § 5E1.2, assuming the estimated offense level above, the fine range for this offense would be $15,000 to $150,000, plus applicable interest and penalties.

I. Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is at least 1 year, but not more than 3 years.

j. Pursuant to guideline §5E1.1(a)(1), the Court shall enter a restitution order for the full amount of the victims' losses, which the parties agree will be an amount of $4,138,937.59. However, the defendant voluntarily agrees to pay an additional $294,900 in restitution for the PPP funds that he fraudulently obtained. Thus, the total restitution that the defendant agrees to pay in this case is $4,433,837.59.

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.

5/21/21
Date

MICHAEL LAIN
Defendant

5/21/21
Date

SABRA BARNETT
JOEY HAMBY
Attorneys for Defendant LAIN

6/28/21
Date

PEGEEN D. RHYNE
PATRICIA DAVIES
Assistant U.S. Attorneys