The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff v. BAOKE ZHANG, Defendant.	NO. CR 20-169RAJ **PLEA AGREEMENT**

The United States of America, by and through Daniel S. Kahn, Acting Chief, and Amanda R. Vaughn, Trial Attorney, of the Fraud Section of the U.S. Department of Justice and Brian T. Moran, United States Attorney for the Western District of Washington, and Brian D. Werner, Assistant United States Attorney for said District, Defendant Baoke Zhang, and Defendant's attorney, Jesse Cantor, Assistant Federal Public Defender, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c).

1. **Waiver of Indictment.** Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in an Information.

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2. **The Charge**. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charge contained in the Information.

a. Wire Fraud, as charged in Count 1, in violation of Title 18, United States Code, Section 1343;

By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering his guilty pleas, he will be placed under oath. Any statement given by Defendant under oath may be used by the United States in a prosecution for perjury or false statement.

3. **Elements of the Offense**. The elements of the offense to which Defendant is pleading guilty, Wire Fraud, as charged in Count 1, is as follows:

First, Defendant knowingly participated in, devised, and intended to devise a scheme or plan to defraud or a scheme or plan for obtaining money or property by means of false and fraudulent pretenses, representations, or promises;

Second, the statements made or facts omitted as part of the scheme were material, that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property;

Third, Defendant acted with the intent to defraud, that is, the intent to deceive and cheat; and

Fourth, Defendant used, or caused to be used, an interstate wire communication to carry out or attempt to carry out an essential part of the scheme.

4. **The Penalties**. Defendant understands that the statutory penalties applicable to the offense to which Defendant is pleading guilty are as follows:

a. For the offense of Wire Fraud, as charged in Count 1: A maximum term of imprisonment of up to twenty (20) years, a fine of up to $250,000.00, a period of supervision following release from prison of up to three years, and a mandatory special assessment of $100.00. If a probationary sentence is imposed, the probation period can be for up to five (5) years.

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Defendant understands that supervised release is a period of time following imprisonment during which he will be subject to certain restrictive conditions and requirements. Defendant further understands that if supervised release is imposed and he violates one or more of the conditions or requirements, Defendant could be returned to prison for all or part of the term of supervised release that was originally imposed. This could result in Defendant's serving a total term of imprisonment greater than the statutory maximum stated above.

Defendant understands that as a part of any sentence, in addition to any term of imprisonment and/or fine that is imposed, the Court may order Defendant to pay restitution to any victim of the offense, as required by law.

Defendant further understands that the consequences of pleading guilty may include the forfeiture of certain property, either as a part of the sentence imposed by the Court, or as a result of civil judicial or administrative process.

Defendant agrees that any monetary penalty the Court imposes, including the special assessment, fine, costs, or restitution, is due and payable immediately and further agrees to submit a completed Financial Statement of Debtor form as requested by the United States Attorney's Office.

5. **Immigration Consequences**. Defendant recognizes that pleading guilty may have consequences with respect to Defendant's immigration status if Defendant is not a citizen of the United States. Under federal law, a broad range of crimes are grounds for removal, and some offenses make removal from the United States presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, and Defendant understands that no one, including Defendant's attorney and the Court, can predict with certainty the effect of a guilty plea on immigration status. Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any immigration consequences that Defendant's guilty plea may entail, even if the consequence is Defendant's mandatory removal from the United States.

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6. **Rights Waived by Pleading Guilty.** Defendant understands that by pleading guilty, he knowingly and voluntarily waives the following rights:

a. The right to plead not guilty and to persist in a plea of not guilty;

b. The right to a speedy and public trial before a jury of Defendant's peers;

c. The right to the effective assistance of counsel at trial, including, if Defendant could not afford an attorney, the right to have the Court appoint one for Defendant;

d. The right to be presumed innocent until guilt has been established beyond a reasonable doubt at trial;

e. The right to confront and cross-examine witnesses against Defendant at trial;

f. The right to compel or subpoena witnesses to appear on Defendant's behalf at trial;

g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and

h. The right to appeal a finding of guilt or any pretrial rulings.

7. **United States Sentencing Guidelines**. Defendant understands and acknowledges that the Court must consider the sentencing range calculated under the United States Sentencing Guidelines and possible departures under the Sentencing Guidelines together with the other factors set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense(s); (2) the history and characteristics of Defendant; (3) the need for the sentence to reflect the seriousness of the offense(s), to promote respect for the law, and to provide just punishment for the offense(s); (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of Defendant; (6) the need to provide Defendant with educational and vocational training, medical care, or other correctional treatment in the most effective manner; (7)

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the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among defendants involved in similar conduct who have similar records. Accordingly, Defendant understands and acknowledges that:

a. The Court will determine Defendant's Sentencing Guidelines range at the time of sentencing;

b. After consideration of the Sentencing Guidelines and the factors in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

c. The Court is not bound by any recommendation regarding the sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Department, or by any stipulations or agreements between the parties in this Plea Agreement; and

d. Defendant may not withdraw a guilty plea solely because of the sentence imposed by the Court.

8. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

9. **Statement of Facts.** The parties agree on the following facts. Defendant admits he is guilty of the charged offense:

a. From April 2020 to May 2020, Defendant Baoke Zhang knowingly and with intent to defraud, falsely claimed to be eligible for the following COVID-19 relief programs, and sought and/or obtained the following funds based on his materially false representations:

COVID-19 Relief Program	**Funds Attempted to Obtain or Received**
U.S. Small Business Administration: Paycheck Protection Program	Attempted to obtain over $550,000
U.S. Small Business Administration: Economic Injury Disaster Loan Program	Received $10,000
Relief Program #1	Attempted to obtain $2,000
Relief Program #2	Received $5,000
Relief Program #3	Received $1,500

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b. *Zhang's Fraudulent Paycheck Protection Program Loan Applications*. The Paycheck Protection Program ("PPP") was a source of relief authorized by the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to Americans suffering the economic effects caused by the COVID-19 pandemic. The PPP provided forgivable loans to small businesses for job retention and certain other expenses. To qualify for a PPP loan, a business must have been in operation as of February 15, 2020, and must have had employees for whom it paid salaries and payroll taxes or paid independent contractors. On the application for a PPP loan, an authorized representative of the applicant-business had to certify the business's eligibility and also had to state, among other things, the business's average monthly payroll expenses and number of employees, as well as provide documentation showing payroll expenses.

c. In furtherance of the scheme to defraud, the defendant submitted at least four fraudulent application packages for PPP loans on behalf of purported businesses he owned to three different lenders participating in the PPP. In each of the loan applications, Zhang intentionally made materially false statements about each business's eligibility for the loans. In fact, Zhang knew that none of the businesses on whose behalf he applied had existed as of February 15, 2020, or had paid employees. As Zhang knew, none of the businesses were eligible for a PPP loan. In total, the defendant applied for four different PPP loans by submitting applications that contained materially false statements to the following lenders in the following amounts:

Entity Name	Lender	Loan Amount
Baoke Zhang dba Baoke Zhang	Lender 1	$600,000
Baoke Zhang dba Baoke Zhang	Lender 2/Financial Institution 2	$600,000
Cloud Optimization	Lender 2/Financial Institution 2	$325,000
Baoke Zhang dba Baoke Zhang	Lender 3/Financial Institution 3	$41,580.63

d. On April 10, 2020, Zhang submitted a fraudulent PPP loan application package to Lender 1 in support of a $600,000 PPP loan for a sole proprietorship in Zhang's name. To support the loan amount, Zhang falsely claimed that the sole proprietorship had an average monthly payroll of $240,000 and 25 employees. Zhang also falsely certified that the sole proprietorship "was in operation on February 15, 2020 and has employees for whom it paid salaries and payroll taxes or paid independent contractors." In fact, as Zhang knew, the sole proprietorship did not exist as of February 15, 2020, and did not have employees.

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e. In support of the application, Zhang also submitted several documents that Zhang knew to be fake and to contain materially false statements, including: 1) a fake payroll document on which he listed approximately 25 names as employees and showed $2.8 million in payroll; 2) a fake IRS Form 941 that falsely claimed that the sole proprietorship had paid taxable wages to approximately 25 employees in the fourth quarter of 2019; and 3) a fake IRS Schedule C to Form 1040 that falsely claimed $138,700 in profit in tax year 2019.

f. On May 4, 2020, Lender 1 sent Zhang an email seeking signature on documents identified as a loan note and ACH deposit information. Shortly after sending the email, a representative of Lender 1 emailed Zhang and noted that Lender 1 had discovered a discrepancy in some of the information Zhang had provided when compared to SBA data. The representative informed Zhang that, although Zhang had submitted tax forms showing the Employer Identification Number ("EIN") for the sole proprietorship to have been in use in 2019, data from the SBA reported that Zhang had obtained the EIN only on April 3, 2020. The representative asked Zhang to provide documentation showing the date he obtained the EIN and informed Zhang that he should reply by 5:00 p.m. that day or Lender 1 would decline the application.

g. Later the same day, Zhang responded to the email and provided a falsified IRS Notice CP 575, which Zhang had manipulated and falsified to show that an EIN had been applied for and assigned by the IRS to the sole proprietorship on April 3, 2017. In fact, as Zhang knew, he had not applied for and obtained an EIN for the sole proprietorship until on or about April 3, 2020, and the real Notice CP 575 Zhang had received from the IRS reflected this later date. In his email to the Lender 1 representative, Zhang also claimed that "[t]here are some change in situation with my business in last few days, and don't need this loan. I would like to withdraw and cancel my ppp loan application." Zhang also falsely claimed that he did not "know why SBA record incorrectly show the date. My business and EIN date back to 2017." Lender 1 did not provide Zhang with the funds for this loan.

h. On or about April 19, 2020, Zhang submitted another fraudulent PPP loan application package to Lender 2 in support of a $600,000 PPP loan for a sole proprietorship in Zhang's name. Zhang used his social security number as the entity's tax identification number instead of the EIN he had provided with the loan application he submitted to Lender 1. To support the loan amount, Zhang falsely claimed that the sole proprietorship had an average monthly payroll of $240,000 and 25 employees. Zhang also falsely certified that the sole proprietorship "was in operation on February 15, 2020 and has employees for whom it paid salaries and payroll taxes or paid independent contractors." Zhang submitted the same documents he knew to be fake that he had provided to Lender 1. Zhang submitted additional records he knew to be fake, including

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additional fake IRS Forms 941 for the first three quarters of 2019 and an additional fake payroll document falsely purporting to show payroll payments from the first part of 2020.

i. On or about April 23, 2020, Zhang submitted another fraudulent PPP loan application package to Lender 2 in support of a $325,000 PPP loan for a company he purported to own called Cloud Optimization LLC. To support the loan amount, Zhang falsely claimed that Cloud Optimization LLC had an average monthly payroll of $130,000 and 20 employees. Zhang also falsely certified that Cloud Optimization LLC "was in operation on February 15, 2020 and has employees for whom it paid salaries and payroll taxes or paid independent contractors." In fact, as Zhang knew, the entity did not exist as of February 15, 2020, and did not have employees.

j. In support of the application, Zhang also submitted several documents that Zhang knew to be fake and to contain materially false statements. Among others, Zhang submitted a fake IRS Notice CP 575 falsely purporting to show that an EIN had been assigned to Cloud Optimization LLC on April 21, 2018. In fact, Zhang obtained an EIN for Cloud Optimization LLC on April 21, 2020. Zhang also submitted: 1) a fake IRS Form 941 that falsely claimed that Cloud Optimization had paid taxable wages to approximately 20 employees in the fourth quarter of 2019; and 2) a fake document falsely purporting to show account activity in a Financial Institution 1 account ending in 5806 in Zhang and Cloud Optimization LLC's names. The account ending in 5806 was in the name of "Baoke Zhang dba Baoke Zhang" and the account activity on the fake document had not occurred.

k. Lender 2 provided the loan application package to Financial Institution 2. On or about May 5, 2020, based on the materially false statements Zhang made in the application package, Financial Institution 2 approved the loan. On or about May 5, 2020, Financial Institution 2 attempted to transmit the $325,000 to Financial Institution 1 account ending in 5806, but the money was returned before it was deposited because the account name associated with the account ending in 5806 did not match the name Zhang provided to Lender 2 and Financial Institution 2.

l. On May 4, 2020, Zhang sent a message to Lender 2 and stated, "I want to cancel and withdraw the ppp application with [Lender 2]. Could you help cancel this ppp loan application with the SBA?" According to records from Lender 2, Zhang submitted this request online in relation to the loan he sought for Cloud Optimization LLC.

m. On May 5, 2020, Zhang sent a message to Lender 2 and stated, "Thank you so much for your assistance during ppp loan process. I see the wire has been

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reversal for approved loan A00441314 on May 1st. Could you please let me know what has happened?" According to records from Lender 2, Zhang submitted this request online in relation to the loan he sought in the name of the sole proprietorship.

n. On May 6, 2020, a representative of Lender 2 called Zhang to try to resolve the failed wire transfer of the $325,000 for Cloud Optimization. During the call, Zhang initially stated that he wished to rescind the application because "my business will not need the [ ] funds at this point, so I would like to repay that." He then stated that he wished to discuss the matter with his "team members" and review the financial situation before making a final decision. At the end of the call, Zhang confirmed he wanted Lender 2 to put a hold on both loan applications until he made a decision about whether to move forward. The same day, Zhang submitted requests online to "payoff" both loans for which he had applied at Lender 2.

o. On May 11, 2020, Zhang emailed a representative of Lender 2 and stated, "We would like to cancel and rescind PPP loan applications for both business entities with PayPal. Could you help cancel and rescind the PPP loan application with SBA, so the fund is available to other small business who urgently need it?"

p. On May 12, 2020, an undercover agent posing as a representative of Lender 2 called Zhang. In the call, Zhang stated he had "confirmed with the team" that they would like to cancel both applications he had submitted to Lender 2. Later in the call, when the undercover agent asked if Zhang was canceling the applications because Zhang had other plans in lieu of getting a PPP loan or things had changed with the business, Zhang responded that he had consulted with "the legal team" and did not want to disclose the information at that time. The same day, Zhang submitted another request online to Lender 2, stating, "I want to cancel and rescind the PPP Application. Could you help cancel this ppp loan application with SBA?" According to records from Lender 2, Zhang submitted this request online in relation to the loan he sought for the sole proprietorship. Lender 2 and Financial Institution 2 did not provide Zhang with any loan funds for either application Zhang submitted to Lender 2.

q. In or about May 2020, Zhang submitted a fraudulent PPP loan application package to Lender 3 in support of a $41,580.63 PPP loan for the sole proprietorship in Zhang's name. To support the loan amount, Zhang falsely claimed that the sole proprietorship had an average monthly payroll of $16,632.25. Zhang also falsely certified that the sole proprietorship "was in operation on February 15, 2020 and has employees for whom it paid salaries and payroll taxes or paid independent contractors." Lender 3 provided Zhang's application package to Financial Institution 3. On or about May 20, 2020, Zhang signed a promissory note for the full loan amount, $41,580.63,

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falsely certifying that the information and supporting documents he had provided in support of the application were "true and accurate in all material respects." On May 22, 2020, Zhang was arrested in this case and did not receive funds from this loan application after law enforcement intervention.

r. *Zhang's Fraudulent Economic Injury Disaster Loan Application.* The Economic Injury Disaster Loan ("EIDL") program is an SBA program that provides low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters. In addition to the PPP, the CARES Act also authorized the SBA to provide EIDLs of up to $2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic, with up to $10,000 advances that did not have to be repaid. To qualify for an EIDL advance under the CARES Act, a business had to provide the SBA with information about its operations, such as the number of employees, gross revenues, and cost of goods sold in the 12-month period preceding January 31, 2020. If approved, the amount of the EIDL was determined by the information provided about a business's employees, revenue, and cost of goods. The amount of the advance was determined based on the number of employees an entity had. EIDL funds could be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rents, and mortgage payments.

s. On or about April 5, 2020, Zhang submitted a fraudulent application containing several material false statements to the SBA for an EIDL for the sole proprietorship in Zhang's name. In the application, Zhang falsely claimed that the sole proprietorship had 49 employees as of January 31, 2020; $2,978,000 in gross revenue in the 12-month period preceding January 31, 2020, and $2,647,906 in cost of goods sold in the 12-month period before January 31, 2020. In fact, Zhang knew that the sole proprietorship in his name did not exist before January 31, 2020 and did not have any employees, revenues, or cost of goods in the relevant 12-month period. In reliance on the false information provided by Zhang, the SBA transferred, by interstate wire, an EIDL advance of $10,000—the maximum allowed under the CARES Act—on or about May 1, 2020, to a bank account on which Zhang was a signatory at Financial Institution 1.

t. *Zhang's Fraudulent Application for COVID-19 Relief Funds fromNon-Profit 1.* Non-Profit 1 established Relief Program 1 to assist restaurant employees whose employment was affected by the COVID-19 pandemic. Relief Program 1 provided one-time grants of $500 to qualifying restaurant workers who provided proof they had been employed in the restaurant industry since before December 10, 2019, and proof that they had suffered decreased or loss work after March 10, 2020.

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u. Between on or about April 19, 2020, and April 23, 2020, Zhang submitted four fraudulent applications for Relief Program 1 grants in the names of Zhang, his wife, and both of Zhang's parents. Each application contained several material false statements that Zhang, his wife, and both of Zhang's parents had been working in the restaurant industry since before December 10, 2019, and had suffered decreased or loss work after March 10, 2020. In fact, Zhang knew that neither he, his wife, nor his parents had worked in the restaurant industry during the relevant period.

v. In support of the applications in his and his wife's names, Zhang provided fake paystubs and fake letters he created purporting to be from restaurant owners stating that Zhang and his wife had been terminated due to the pandemic. In support of the applications in his parents' names, Zhang provided fake paystubs he created purporting to show a drop in income between 2019 and March 2020.

w. Between on or about May 22, 2020, and June 5, 2020, in reliance on the material false statements Zhang made in the four applications, Non-Profit 1 notified Zhang by email that each of the applications had been approved. Non-Profit 1 mailed $500 checks to Zhang's residence in Issaquah, Washington, for each application.

x. *Zhang's Fraudulent Application for COVID-19 Relief Funds from Company 1's Relief Program 2.* Company 1 established a small business relief fund for small businesses operating in designated neighborhoods in the Seattle, Washington region. Under the program, only service and retail establishments open to the general public, with less than 50 employees or less than $7 million in revenue, and located in either the South Lake Union or Regrade neighborhoods of Seattle, Washington, or in Bellevue, Washington could qualify.

y. In April 2020, Zhang submitted a fraudulent application to Relief Program 2 that contained several material false statements. In the application, Zhang falsely claimed to own a business called Wireless Kiosk that operated in the Westlake Center Mall in Seattle. In fact, Zhang knew that Wireless Kiosk did not exist and he did not have any association with a small business meeting the eligibility requirements of the Neighborhood Small Business Relief Fund.

z. On or about April 24, 2020, Company 1, notified Zhang by email that the business was eligible for a $5,000 grant based on the materially false application Zhang had submitted. On or about May 11, 2020, Zhang received a $5,000 deposit from Company 1 into Financial Institution 1 account ending in 5806, over which he had signatory authority.

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aa. *Zhang's Fraudulent Application for COVID-19 Relief Funds Non-Profit 2.* Non-Profit 2 is a national non-profit organization focused on poverty-relief efforts. Through its platform for cash grants Non-Profit 2facilitated COVID-19 relief grants through Relief Program 3 to qualifying individuals. Relief Program 3 was a relief program for restaurant workers in King County, Washington, who had suffered financial hardship because of the COVID-19 pandemic.

bb. In or about April 2020, Zhang submitted at least three fraudulent applications for COVID-19 relief assistance for grants from Relief Program 3 in his name, his wife's name, and his father's name that contained materially false statements about the applicants' eligibility—specifically, that all three's employment in the restaurant industry had been harmed by the COVID-19 pandemic.

cc. Based on the materially false statements, Zhang received three $500 deposits from Non-Profit 2's cash grant platform—on April 20, April 28, and April 29, 2020—into different bank accounts over which Zhang had signatory authority at Financial Institution 1.

dd. *Zhang's Transfer of Fraudulently Obtained Funds Between Accounts He Controlled.* Beginning on or about May 4, 2020, the same day Lender 1's representative questioned Zhang about the eligibility of his sole proprietorship for PPP loan funds, Zhang began transferring some of the COVID-19 relief funds he had fraudulently obtained up to that point through various accounts under his control at Financial Institution 1 before ultimately transferring them to an investment account in Zhang's name at Financial Institution 4.

ee. On or about May 4, 2020, Zhang transferred approximately $10,634—which included the $10,000 EIDL advance he received on May 1, 2020, and the $500 Relief Program 3 grant he received on April 29, 2020—from Financial Institution 1 account ending in 7517 to Financial Institution 1 account ending in 7520, over which he also had signatory authority. The same day, Zhang transferred the $500 Relief Program 3 grant he had received on or about April 20, 2020, from Financial Institution 1 account ending in 4037 to the account ending in 7520. On or about May 5, 2020, Zhang transferred the combined EIDL ($10,000) and Relief Program 3 ($1,000) funds from the account ending in 7520 to the investment account at Financial Institution 4. These amounts were proceeds of the scheme to defraud.

ff. For the purpose of executing the scheme to defraud, Zhang transmitted and caused to be transmitted wire communications in interstate commerce. As a representative example, on or about April 19, 2020, Zhang transmitted by wire

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communication in interstate commerce a PPP application containing materially false statements from within the State of Washington to outside the State of Washington.

gg. Through the scheme to defraud and use of material false and fraudulent pretenses, representations and promises, Zhang intended to obtain more than $550,000 in COVID-19 relief funds which Zhang knew he was not eligible to receive.

The parties agree that the Court may consider additional facts contained in the Presentence Report (subject to standard objections by the parties) and/or that may be presented by the United States or Defendant at the time of sentencing, and that the factual statement contained herein is not intended to limit the facts that the parties may present to the Court at the time of sentencing.

10. **Sentencing Factors.** The parties agree that the following Sentencing Guidelines provisions apply to this case:

a. A base offense level of 7, pursuant to USSG § 2B1.1(a)(1);

b. A 14-level increase, pursuant to USSG § 2B1.1(b)(1)(I), because the loss was more than $550,000 (and the government reserves the right to argue for a higher Guidelines loss amount);

c. A 2-level increase, pursuant to USSG § 2B1.1(b)(10)(C), because the offense involved sophisticated means; and

The parties agree they are free to present arguments regarding the applicability of all other provisions of the United States Sentencing Guidelines. Defendant understands, however, that at the time of sentencing, the Court is free to reject these stipulated adjustments, and is further free to apply additional downward or upward adjustments in determining Defendant's Sentencing Guidelines range.

11. **Acceptance of Responsibility.** At sentencing, *if* the district court concludes Defendant qualifies for a downward adjustment acceptance for acceptance of responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or greater, the United States will make the motion necessary to permit the district court to decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b),

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because Defendant has assisted the United States by timely notifying the United States of his intention to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

12. **Restitution.** Defendant shall make restitution to the following parties:

Company 1	$5,000
Relief Program 3	$1,500
U.S. Small Business Administration	$10,000

Said amounts shall be due and payable immediately and shall be paid in accordance with a schedule of payments as proposed by the United States Probation Office and ordered by the Court.

a. The full amount of restitution shall be due and payable immediately on entry of judgment and shall be paid as quickly as possible. If the Court finds that the defendant is unable to make immediate restitution in full and sets a payment schedule as contemplated in 18 U.S.C. § 3664(f), Defendant agrees that the Court's schedule represents a minimum payment obligation and does not preclude the U.S. Attorney's Office from pursuing any other means by which to satisfy the defendant's full and immediately-enforceable financial obligation, including, but not limited to, by pursuing assets that come to light only after the district court finds that the defendant is unable to make immediate restitution.

b. Defendant agrees to disclose all assets in which Defendant has any interest or over which Defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or third party. Defendant agrees to cooperate fully with the United States' investigation identifying all property in which Defendant has an interest and with the United States' lawful efforts to enforce prompt payment of the financial obligations to be imposed in connection with this prosecution. Defendant's cooperation obligations are: (1) before sentencing, and no more than 30 days after executing this Plea Agreement, truthfully and completely executing a Financial Disclosure Statement

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provided by the United States Attorney's Office and signed under penalty of perjury regarding Defendant's and Defendant's spouse's financial circumstances and producing supporting documentation, including tax returns, as requested; (2) providing updates with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within seven days of the event giving rise to the changed circumstances; (3) authorizing the United States Attorney's Office to obtain Defendant's credit report before sentencing; (4) providing waivers, consents or releases requested by the U.S. Attorney's Office to access records to verify the financial information; (5) authorizing the U.S. Attorney's Office to inspect and copy all financial documents and information held by the U.S. Probation Office; (6) submitting to an interview regarding Defendant's Financial Statement and supporting documents before sentencing (if requested by the United States Attorney's Office), and fully and truthfully answering questions during such interview; and (7) notifying the United States Attorney's Office before transferring any interest in property owned directly or indirectly by Defendant, including any interest held or owned in any other name, including all forms of business entities and trusts.

c. The parties acknowledge that voluntary payment of restitution prior to the adjudication of guilt is a factor the Court considers in determining whether Defendant qualifies for acceptance of responsibility pursuant to USSG § 3E1.1(a).

13. **Forfeiture of Assets**. The Defendant understands that the forfeiture of property is part of the sentence that must be imposed in this case. The Defendant agrees to forfeit to the United States immediately his right, title, and interest in all property that constitutes or is traceable to proceeds of his commission of Wire Fraud. All such property is forfeitable pursuant to Title 18, United States Code, Section 981(a)(1)(C), by way of Title 21, United States Code, Section 2461(c), and includes but is not limited to:

a. $10,000 in U.S. funds seized on June 8, 2020 from Financial Institution 4 Brokerage Account -2129, opened in the name of Baoke Zhang; and,

b. a sum of money in the amount of $6500, reflecting the additional proceeds the Defendant obtained from the offense.

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The Defendant agrees to fully assist the United States in the forfeiture of any forfeitable property and to take whatever steps are necessary to pass clear title to the United States, including but not limited to: surrendering title and executing any documents necessary to effect forfeiture; assisting in bringing any property located outside the United States within the jurisdiction of the United States; and taking whatever steps are necessary to ensure that property subject to forfeiture is not sold, disbursed, wasted, hidden, or otherwise made unavailable for forfeiture. The Defendant agrees not to file a claim to any of this property in any federal forfeiture proceeding, administrative or judicial, that may be or has been initiated, or to otherwise contest any federal forfeiture proceeding that may be or has been initiated. The Defendant also agrees he will not assist any party who may file a claim to this property in any federal forfeiture proceeding.

The United States reserves its right to proceed against any remaining property not identified in this Plea Agreement, including any property in which the Defendant has any interest or control, if that property constitutes or is traceable to proceeds of his commission of Wire Fraud.

14. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement, the Fraud Section of the Criminal Division of the U.S. Department of Justice and the United States Attorney's Office for the Western District of Washington agrees not to prosecute Defendant for any additional offenses known to it as of the time of this Plea Agreement based upon evidence in its possession at this time, and that arise out of the conduct giving rise to this investigation. In this regard, Defendant recognizes the United States has agreed not to prosecute all of the criminal charges the evidence establishes were committed by Defendant solely because of the promises made by Defendant in this Plea Agreement. Defendant agrees, however, that for purposes of preparing the Presentence Report, the United States Attorney's Office will provide the United States Probation Office with evidence of all conduct committed by Defendant.

Defendant agrees that any charges to be dismissed before or at the time of sentencing were substantially justified in light of the evidence available to the United

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States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119 (1997).

15. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if Defendant breaches this Plea Agreement, the United States may withdraw from this Plea Agreement and Defendant may be prosecuted for all offenses for which the United States has evidence. Defendant agrees not to oppose any steps taken by the United States to nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement, Defendant has waived any objection to the re-institution of any charges that previously were dismissed or any additional charges that had not been prosecuted.

Defendant further understands that if, after the date of this Agreement, Defendant should engage in illegal conduct, or conduct that violates any conditions of release or the conditions of confinement (examples of which include, but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the Pretrial Services Officer, Probation Officer, or Court), the United States is free under this Plea Agreement to file additional charges against Defendant or to seek a sentence that takes such conduct into consideration by requesting the Court to apply additional adjustments or enhancements in its Sentencing Guidelines calculations in order to increase the applicable advisory Guidelines range, and/or by seeking an upward departure or variance from the calculated advisory Guidelines range. Under these circumstances, the United States is free to seek such adjustments, enhancements, departures, and/or variances even if otherwise precluded by the terms of the Plea Agreement.

16. **Waiver of Appellate Rights and Rights to Collateral Attacks.** Defendant acknowledges that, by entering the guilty plea required by this plea agreement, Defendant waives all rights to appeal from Defendant's conviction, and any pretrial rulings of the Court, and any rulings of the Court made prior to entry of the judgment of

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conviction. Defendant further agrees that, provided the Court imposes a custodial sentence that is within or below the Sentencing Guidelines range (or the statutory mandatory minimum, if greater than the Guidelines range) as determined by the Court at the time of sentencing, Defendant waives to the full extent of the law:

a. Any right conferred by Title 18, United States Code, Section 3742, to challenge, on direct appeal, the sentence imposed by the court, including any fine, restitution order, probation or supervised release conditions, or forfeiture order (if applicable); and

b. Any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation; and

This waiver does not preclude Defendant from bringing an appropriate motion pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the decisions of the Bureau of Prisons regarding the execution of his sentence.

If Defendant breaches this Plea Agreement at any time by appealing or collaterally attacking (except as to effectiveness of legal representation) the conviction or sentence in any way, the United States may prosecute Defendant for any counts, including those with mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

17. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into this Plea Agreement freely and voluntarily, and that no threats or promises were made to induce Defendant to enter a plea of guilty other than the promises contained in this Plea Agreement or set forth on the record at the change of plea hearing in this matter.

18. **Statute of Limitations.** In the event this Plea Agreement is not accepted by the Court for any reason, or Defendant breaches any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach

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of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

19. **Completeness of Agreement.** The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties. This Agreement binds only the Fraud Section of the Criminal Division of the U.S. Department of Justice and the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 22nd day of October, 2020.

/s Baoke Zhang
BAOKE ZHANG
Defendant

JESSE CANTOR
Defendant's Attorney

AMANDA R. VAUGHN
Trial Attorney, Fraud Section
U.S. Department of Justice

BRIAN D. WERNER
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Western District of Washington

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