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UNITED STATES OF AMERICA

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SOUTHERN DISTRICT OF CALIFORNIA
BY WP DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THOMAS ZOLEZZI, Defendant.	Case No. 23-cr-02352 -AJB **PLEA AGREEMENT**

IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA, through its counsel, Tara K. McGrath, United States Attorney, and Christopher M. Alexander, Assistant United States Attorney, and defendant, THOMAS ZOLEZZI, with the advice and consent of Domenic J. Lombardo, counsel for defendant, as follows:

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cma:10/25/23

I

THE PLEA

A. THE CHARGE

Defendant agrees to waive Indictment and plead guilty to a single-count Information charging defendant with:

> On May 14, 2020, within the Southern District of California, and elsewhere, defendant THOMAS ZOLEZZI, having knowingly devised a material scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowingly transmitted and caused to be transmitted by means of a wire communication in interstate commerce certain writings, signs, signals, and sounds, that is, an application for a Payroll Protection Program Loan in the amount of $11,354 from inside of California to outside of California, to pay for his personal expenses instead of paying the salary of his employees. All in violation of Title 18, United States Code, Section 1343.

Further, in addition to the terms contained in Section X.G.3. below, the attached restitution addendum shall govern restitution in this case.

B. PROSECUTION OF ADDITIONAL CHARGES

In exchange for Defendant's guilty plea, the United States Attorney's Office for the Southern District of California agrees not to initiate or prosecute any additional criminal charges against Defendant related to the misappropriation of funds, as described in §II(B), and not to prosecute Defendant thereafter on such additional charges, unless Defendant breaches the plea agreement or the guilty plea entered pursuant to this plea agreement is set aside for any reason.

Defendant expressly waives all constitutional and statutory defenses to the charges alleged in the Information and in this plea agreement, and to the reinstatement of any charges deferred pursuant to this agreement.

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In return for the concessions made by the Government herein, Defendant agrees further as follows:

1. Defendant will not file any substantive motions (including those described in Fed. R. Crim. P. 12, other than motions seeking bail review); and

2. Upon acceptance of Defendant's guilty plea by the District Court, and not withstanding any preservation order(s) entered by the District Court, the Government need not hold or preserve any evidence seized in connection with this case.

II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

The offense to which defendant is pleading guilty has the following elements:

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

2. 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;

3. Defendant acted with the intent to defraud, that is, the intent to deceive or cheat; and

4. 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.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each element of the crime and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

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1. The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted on March 27, 2020, to provide over $2 trillion of economic relief to workers, families, small businesses, industry sectors, and other levels of government that have been hit hard by the public health crisis created by the Coronavirus ("COVID-19"). Among the provisions contained in the CARES Act are provisions authorizing the Small Business Administration ("SBA") to temporarily guarantee loans under a new 7(a) loan program titled the Paycheck Protection Program ("PPP"). Another source of relief under the CARES Act was the authorizing the SBA to provide Economic Injury Disaster Loans ("EIDL").

2. This SBA-backed PPP program was designed to help businesses keep their workforce employed during the COVID-19 crisis. Under the PPP, borrowers received loans to cover payroll costs and certain eligible nonpayroll costs. A borrower could apply for forgiveness once all loan proceeds for which the borrower was requesting forgiveness have been used. Borrowers could apply for forgiveness at any time up to the maturity date of the loan. If borrowers did not apply for forgiveness within 10 months after the last day of the covered period, then PPP loan payments were no longer deferred, and borrowers would begin making loan payments to their PPP lender. Loans guaranteed under the PPP were 100 percent guaranteed by SBA, and the full principal amount of the loans could in some circumstances qualify for loan forgiveness.

3. A company was eligible for a PPP loan if it has 500 or fewer employees whose principal place of residence is in the United States or was a business that operates in a certain industry and met the applicable SBA employee-based size standards for that industry, and was in operation on February 15, 2020.

4. In order to obtain a PPP loan, each applicant was required to provide information about the subject business's operations, such as the date of opening, number of employees, and past revenues. Each applicant was also required to certify that all the information in the application was true and correct to the best of the applicant's knowledge.

5. Under the PPP loan program, the maximum loan amount is the lesser of $10 million or an amount calculated using a payroll-based formula specified in the Act. The entire loan amount may be forgiven. However, for 100% forgiveness, at least 60% of loan must be used on payroll costs, and the remaining 40% may be spent on interest on mortgages, rent, and utilities in the 24 weeks post loan disbursement.

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6. The PPP loans were not directly distributed through the SBA. Rather, the SBA approved 7(a) lenders to make PPP loans on a delegated basis. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were 100% guaranteed by the SBA. The SBA maintained the power to exercise authority over PPP loan administration.

7. The EIDL program is administered by the SBA and provides low-interest funding to small businesses, renters, and homeowners affected by the declared disasters. To obtain a EIDL, a qualifying applicant must submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. For COVID-19 EIDL, the 12-month period was the year preceding January 31, 2020. The applicant must certify that all the information in the application is correct and agree that the funds will be used solely as working capital to alleviate economic injury caused by the disaster. Working capital expenses include payroll expenses, sick leave, production costs, and ordinary business obligations, like debts, rent, and mortgage payments.

8. The amount of an EIDL is determined, in part, by the information provided in the application. Any EIDL is issued directly by the SBA. If an applicant receives a PPP loan, the EIDL cannot be used for the same purposes as the PPP loan.

9. Defendant Thomas Zolezzi ("Zolezzi") applied for and received CARES Act relief in the form of three PPP loans and two EIDLs.

10. First, on May 14, 2020, Zolezzi applied for and received a $11,354 PPP loan from U.S. Bank. The application was received through the SBA E-Tran server which is located in Sterling, Virginia.

11. The application was digitally signed by Clifford Ichiyasu. Clifford Ichiyasu never applied for this loan or signed this application.

12. The SBA paid $567.70 in fees to the lender. The total outstanding balance of $11,550.80, which included $11,354 for the initial loan amount and $196.80 in interest), was forgiven on February 2, 2022 and paid by the SBA. Forgiveness applications were received through the Summit Server located in Oregon. In the application, Zolezzi represented that he used the funds to pay employees. Instead, Zolezzi used the fund to pay for his personal expenses.

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13. Second, on December 9, 2020, Zolezzi applied for and received a $149,900 EIDL loan from the SBA. The application was received in a Microsoft cloud-based platform using a Rapid Finance application, through servers located in Des Moines, Iowa.

14. The application claimed Zolezzi was an independent contractor and had annual revenues of $298,000. A review of Zolezzi's bank records did not show annual revenues of this amount. This loan remains outstanding.

15. Third, on February 9, 2021, Zolezzi applied for and received a $1,160,667 PPP loan from Capital Plus Financial. The application was received though the Summit platform, a cloud-based platform utilizing the AWS GOV cloud servers located in Oregon.

16. The application claimed Casamar USA, Inc. had 65 employees with an average monthly payroll of $464,267. The number of employees and amount of payroll claimed on the application was false.

17. The SBA paid the lender $34,820 in fees. According to Capital Plus Financial, no payments have been made on this loan and the payoff amount as of July 25, 2023 is $1,189,190.79. This loan has not been forgiven.

18. Fourth, on May 6, 2021, Zolezzi applied for and received a $1,026,875 PPP loan from Capital Plus Financial. The application was received though the Summit platform, a cloud-based platform utilizing the AWS GOV cloud servers located in Oregon.

19. The application claimed Zolezzi, operating as a sole proprietor, had 65 employees with an average monthly payroll of $410,750. The number of employees and amount of payroll claimed on the application was false.

20. The SBA paid the lender $30,716.25 in fees. According to Capital Plus Financial, no payments have been made on this loan and the payoff amount as of July 25, 2023 is $1,049,719.45. On June 20, 2022, Zolezzi submitted a loan forgiveness application. The loan has not been forgiven.

21. Fifth, on December 14, 2021, Zolezzi applied for and received a $473,330 EIDL loan from the SBA. The application was received in a Microsoft cloud-based platform using a Rapid Finance application, through servers located in Des Moines, Iowa.

22. The application claimed that Casamar USA, Inc. had annual gross revenues of $12,505,184. This claim was false and Zolezzi's bank records do not show annual revenues of this amount. The application was digitally signed by

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Clifford Ichiyasu. Clifford Ichiyasu never applied for this loan or signed this application. This loan remains outstanding.

23. Zolezzi agrees that he caused a total loss of at least $2,939,794.99: the SBA was defrauded in the amount of $700,884.75 and Capital Plus Financial was defraud by at least $2,238,910.24. Zolezzi agrees to pay restitution to the SBA in the amount of $700,884.75 and Capital Plus Financial in the amount of at least $2,238,910.24.

III

PENALTIES

The crime to which Defendant is pleading guilty carries the following penalties:

A. a maximum of 20 years in prison;

B. a maximum $1,000,000 fine;

B. a mandatory special assessment of $100.00 per count;

C. an order from the Court pursuant to 18 U.S.C. §§ 3663 or 3663A that defendant make mandatory restitution to the victims of the offense of conviction, or the successors, heirs, and estates of the victims. Defendant understands that the Court shall also order, if agreed to by the parties in this plea agreement, restitution to persons other than the victims of the offense of conviction; and

D. a term of supervised release of at least 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to serve in prison, upon any such revocation, all or part of the statutory maximum term of supervised release for the offense that resulted in such term of supervised release.

In addition, Defendant shall be subject to an order of restitution to the SBA in the amount of $700,884.75 and Capital Plus Financial in the amount of at least $2,238,910.24.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS AND UNDERSTANDING OF CONSEQUENCES

This guilty plea waives defendant's right at trial to:

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A. Continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;

B. A speedy and public trial by jury;

C. The assistance of counsel at all stages of trial;

D. Confront and cross-examine adverse witnesses;

E. Testify and present evidence and to have witnesses testify on behalf of defendant; and

F. Not testify or have any adverse inferences drawn from the failure to testify.

V

DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

Any information establishing the factual innocence of defendant known to the undersigned prosecutor in this case has been turned over to defendant. The Government will continue to provide such information establishing the factual innocence of defendant.

If this case proceeded to trial, the Government would be required to provide impeachment information for its witnesses. In addition, if defendant raised an affirmative defense, the Government would be required to provide information in its possession that supports such a defense. By pleading guilty, defendant will not be provided this information, if any, and defendant waives any right to this information. Defendant will not attempt to withdraw the guilty plea or file a collateral attack on the existence of this information.

VI

DEFENDANT'S REPRESENTATION THAT GUILTY PLEA IS KNOWING AND VOLUNTARY

Defendant represents that:

A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel and ~~has a~~

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clear understanding of the charges and the consequences of this plea. By pleading guilty, defendant may be giving up, and rendered ineligible to receive, valuable government benefits and civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury. The conviction in this case may subject defendant to various collateral consequences, including but not limited to revocation of probation, parole, or supervised release in another case; debarment from government contracting; and suspension or revocation of a professional license, none of which can serve as grounds to withdraw Defendant's guilty plea;

B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this agreement or otherwise disclosed to the court;

C. No one has threatened defendant or defendant's family to induce this guilty plea; and,

D. Defendant is pleading guilty because defendant is guilty and for no other reason.

VII

AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF CALIFORNIA

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other authorities in any type of matter, although the Government will bring this plea agreement to the attention of other authorities if requested by defendant.

VIII

APPLICABILITY OF SENTENCING GUIDELINES

The sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). In imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory. The Court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum

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in the statute of conviction. The sentence cannot be determined until a presentence report is prepared by the U.S. Probation Office and defense counsel and the Government have an opportunity to review and challenge the presentence report. **Defendant agrees to request that a presentence report be prepared**. Nothing in this plea agreement limits the Government's duty to provide complete and accurate facts to the district court and the U.S. Probation Office.

IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). The sentence is within the sole discretion of the sentencing judge who may impose the maximum sentence provided by statute. It is uncertain at this time what defendant's sentence will be. The Government has not made and will not make any representation as to what sentence defendant will receive. Any estimate of the probable sentence by defense counsel is not a promise and is **not binding on the Court**. Any recommendation made by the Government at sentencing is also not binding on the Court. If the sentencing judge does not follow any of the parties' sentencing recommendations, defendant will not withdraw the plea.

X

PARTIES' SENTENCING RECOMMENDATIONS

A. SENTENCING GUIDELINE CALCULATIONS

Although the Guidelines are only advisory and just one factor the Court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments, and Departures:

1. Base Offense Level [USSG § 2B1.1] 7

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2.	Loss over $1,500,000 but under $3,500,000 [§ USSG 2B1.1(b)(1)(G)]	+16
3.	Sophisticated Means [§ USSG 2B1.1(b)(10)(C)]	+2
4.	Acceptance of Responsibility [§ 3E1.1]	-3
5.	Expeditious Resolution [§ 5K2.0]	-3*

***The Government reserves the right to reduce its recommended departure if defendant does not proceed to sentencing on the first date set by the Court, unless the parties agree to a continuance or sentencing is continued on the Court's own motion.**

B. ACCEPTANCE OF RESPONSIBILITY

Despite paragraph A above, the Government need not recommend an adjustment for Acceptance of Responsibility if defendant engages in conduct inconsistent with acceptance of responsibility including, but not limited to, the following:

1. Fails to truthfully admit a complete factual basis as stated in the plea at the time the plea is entered, or falsely denies, or makes a statement inconsistent with, the factual basis set forth in this agreement;

2. Falsely denies prior criminal conduct or convictions;

3. Is untruthful with the Government, the Court or probation officer; or

4. Breaches this plea agreement in any way.

C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS INCLUDING THOSE UNDER 18 U.S.C. § 3553

Defendant **may** request or recommend additional downward adjustments, departures, or variances from the Sentencing Guidelines under 18 U.S.C. § 3553. The Government will oppose any downward adjustments, departures, or variances not set forth in Section X, paragraph A above.

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D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

The parties have **no** agreement as to defendant's Criminal History Category, except that, if defendant is determined to be a Career Offender, the parties agree that defendant is automatically a Criminal History Category VI pursuant to USSG § 4B1.1(b).

E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

The facts in the "factual basis" paragraph of this agreement are true and may be considered as "relevant conduct" under USSG § 1B1.3 and as the nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

The Government agrees to recommend the greater of: the low end of the advisory Guidelines range as calculated by the Government; or the time served in custody at the time of sentencing.

G. SPECIAL ASSESSMENT, FINE, AND RESTITUTION

1. Special Assessment

The parties will jointly recommend that defendant pay a special assessment in the amount of $100.00 per felony count of conviction to be paid forthwith at time of sentencing. The special assessment shall be paid through the office of the Clerk of the District Court by bank or cashier's check or money order made payable to the "Clerk, United States District Court."

2. Fine

If the Court does not impose a judgment which includes restitution as set forth below, the parties will jointly recommend that defendant pay a fine in an amount to be determined by the Court at the time of sentencing. The parties agree any fine shall be ordered payable forthwith. Also, if the Court does not impose a judgment which includes

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restitution as contemplated by the plea agreement, the Government will recommend an additional fine to cover the cost of imprisonment, supervised release or probation, pursuant to 18 U.S.C. § 3572(a)(6).

The fine shall be paid through the Office of the Clerk of the District Court by bank or cashier's check or money order made payable to the "Clerk, United States District Court."

3. Restitution

The parties agree that restitution to the SBA in the amount of $700,884.75 and Capital Plus Financial in the amount of at least $2,238,910.24 is a part of this plea agreement. The parties have mutually agreed upon restitution to be imposed as a part of the sentence in this case in the amount of $2,939,794.99.

Defendant understands that this is only an estimate based on currently available information, and the Court may impose restitution of any amount. Defendant agrees that a restitution award in an unanticipated amount is not grounds to withdraw Defendant's guilty plea.

H. SUPERVISED RELEASE

The Government is free to recommend a period of supervised release. If the Court imposes a term of supervised release, Defendant will not seek to reduce or terminate early the term of supervised release until defendant has served at least two-thirds of the term of supervised release and has fully paid and satisfied any special assessments, fine, criminal forfeiture judgment and restitution judgment.

XI

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

Defendant waives (gives up) all rights to appeal and to collaterally attack every aspect of the conviction and sentence. This waiver includes, but is not limited to, any argument that the statute of

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conviction or defendant's prosecution is unconstitutional and any argument that the facts of this case do not constitute the crime charged. The only exceptions are: (i) defendant may appeal a custodial sentence above the high end of the guidelines as recommended by the Government at the time of sentencing; and (ii) defendant may collaterally attack the conviction or sentence on the basis that defendant received ineffective assistance of counsel. If defendant appeals, the Government may support on appeal the sentence or restitution order actually imposed.

XII

BREACH OF THE PLEA AGREEMENT

Defendant and defendant's attorney know the terms of this agreement and shall raise, before the sentencing hearing is complete, any claim that the Government has not complied with this agreement. Otherwise, such claims shall be deemed waived (that is, deliberately not raised despite awareness that the claim could be raised), cannot later be made to any court, and if later made to a court, shall constitute a breach of this agreement.

Defendant breaches this agreement if defendant violates or fails to perform any obligation under this agreement. The following are non-exhaustive examples of acts constituting a breach:

A. Failing to plead guilty pursuant to this agreement;

B. Failing to fully accept responsibility as established in Section X, paragraph B, above;

C. Failing to appear in court;

D. Attempting to withdraw the plea;

E. Failing to abide by any court order related to this case;

F. Appealing (which occurs if a notice of appeal is filed) or collaterally attacking the conviction or sentence in violation of Section XI of this plea agreement; or

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G. Engaging in additional criminal conduct from the time of arrest until the time of sentencing.

If defendant breaches this plea agreement, defendant will not be able to enforce any provisions, and the Government will be relieved of all its obligations under this plea agreement. For example, the Government may proceed to sentencing but recommend a different sentence than what it agreed to recommend above. Or the Government may pursue any charges including those that were dismissed, promised to be dismissed, or not filed as a result of this agreement (defendant agrees that any statute of limitations relating to such charges is tolled indefinitely as of the date all parties have signed this agreement; defendant also waives any double jeopardy defense to such charges). In addition, the Government may move to set aside defendant's guilty plea. Defendant may not withdraw the guilty plea based on the Government's pursuit of remedies for defendant's breach.

Additionally, if defendant breaches this plea agreement: (i) any statements made by defendant, under oath, at the guilty plea hearing (before either a Magistrate Judge or a District Judge); (ii) the factual basis statement in Section II.B in this agreement; and (iii) any evidence derived from such statements, are admissible against defendant in any prosecution of, or any action against, defendant. This includes the prosecution of the charge(s) that is the subject of this plea agreement or any charge(s) that the prosecution agreed to dismiss or not file as part of this agreement, but later pursues because of a breach by the Defendant. Additionally, defendant knowingly, voluntarily, and intelligently waives any argument that the statements and any evidence derived from the statements should be suppressed, cannot be used by the Government, or are inadmissible under the United States Constitution,

Def. Initials [signature]
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any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, and any other federal rule.

XIII

CONTENTS AND MODIFICATION OF AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral. No modification of this plea agreement shall be effective unless in writing signed by all parties.

XIV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

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XV

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation. This is defendant's independent opinion, and defendant's counsel did not advise defendant about what to say in this regard.

Respectfully submitted,

TARA K. MCGRATH
United States Attorney

11/16/23
DATED

Christopher Alexander
Assistant U.S. Attorney

11/6/23
DATED

Domenic J. Lombardo
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.

11/3/23
DATED

Thomas Zolezzi
Defendant

Approved by:

WMC
Mark Conover
Assistant U.S. Attorney

Rev. 6/8/2021 cek/bq

Def. Initials TZ
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