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Clerk, U.S. District Court
District Of Montana
Missoula

ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MATTHEW ANTHONY MARSHALL, Defendant.	CR 20-32-M-DWM PLEA AGREEMENT
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Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America, represented by Timothy J. Racicot and Ryan G. Weldon, Assistant United States Attorneys for the District of Montana, and the defendant,

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Matthew Anthony Marshall, and the defendant's attorney, Justin K. Gelfand, have agreed upon the following:

1. **Scope:** This plea agreement is between the United States Attorney's Office for the District of Montana and the defendant. It does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority, or the United States Probation Office.

2. **Charges:** The defendant agrees to plead guilty to counts I, VII and VIII of the second superseding indictment. Count I charges wire fraud in violation of 18 U.S.C. § 1343, which carries a maximum punishment of 20 years of imprisonment, a \$250,000 fine, three years of supervised release, and a \$100 special assessment. Count VII charges money laundering in violation of 18 U.S.C. § 1957, which carries a maximum punishment of ten years of imprisonment, a \$250,000 fine, three years of supervised release, and a \$100 special assessment. Count VIII charges tax evasion in violation of 26 U.S.C. § 7201, which carries a maximum punishment of five years of imprisonment, a \$100,000 fine, three years of supervised release, and a \$100 special assessment.

At the time of sentencing, if the Court accepts this plea agreement, the United States will move to dismiss counts II through VI and counts IX through XI of the second superseding indictment, as well as the forfeiture allegation.

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3. **Nature of the Agreement:** The parties agree that this plea agreement will be governed by Rule 11(c)(1)(A) and (B), *Federal Rules of Criminal Procedure*. The defendant acknowledges that the agreement will be fulfilled provided the United States: a) moves to dismiss, and the Court agrees to dismiss, counts II through VI, IX through XI and the forfeiture allegation of the second superseding indictment, and does not pursue other charges against the defendant; and b) makes the recommendations provided below. The defendant understands that if the agreement is accepted by the Court, and counts II through VI, IX through XI and the forfeiture allegation are dismissed, there will not be an automatic right to withdraw the plea even if the Court does not accept or follow the recommendations made by the United States.

4a. **Restitution for Wire Fraud:** The defendant understands that restitution to the victim of the crimes charged in the second superseding indictment is mandatory and agrees to be responsible for complete restitution, notwithstanding the agreement of the United States to dismiss certain charges. 18 U.S.C. §§ 3663A(a)(1), (c)(2). The defendant understands the United States will request restitution of approximately \$2,355,000 for the wire fraud scheme and further understands the final figure will be determined at the time of sentencing after both parties and the victim have an opportunity to be heard.

			
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4b. **Restitution for Tax Evasion:** In addition to the restitution for the wire fraud scheme, the defendant agrees to the entry of a restitution order for the tax evasion as outlined in this paragraph. 18 U.S.C. § 3663(a)(3).

(a) The defendant agrees to pay restitution to the Internal Revenue Service in the total amount of \$899,327.00.

(b) The defendant agrees that the total amount of restitution reflected in this paragraph results from the defendant's fraudulent conduct, whether or not fraudulent intent, or similar specific intent element, is included in the count or counts of conviction.

(c) The total amount of restitution consists of the following:

Tax Year(s) or Period(s) and Item(s)	Amount to be Credited to Tax
2013	\$356,756.00
2014	\$153,992.00
2015	\$294,714.00
2016	\$93,865.00
Total:	\$899,327.00

(d) The defendant agrees to pay restitution as ordered by the Court in any restitution order entered pursuant to this plea agreement.

(e) The defendant agrees that the defendant will sign any IRS forms deemed necessary by the IRS to enable the IRS to make an immediate assessment of that portion of the tax and interest that the defendant agrees to pay as





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restitution. The defendant also agrees to sign IRS Form 8821, "Tax Information Authorization."

(f) The defendant agrees not to file any claim for refund of taxes or interest represented by any amount of restitution paid pursuant to this agreement.

(g) The parties understand that defendant will receive proper credit, consistent with paragraph (c) above, for the payments made pursuant to this agreement. Except as set forth in the previous sentence, nothing in this agreement shall limit the IRS in its lawful examination, determination, assessment, or collection of any taxes, penalties or interest due from the defendant for the time periods covered by this agreement or any other time period.

(h) The defendant agrees that this agreement, or any judgment, order, release, or satisfaction issued in connection with this agreement, will not satisfy, settle, or compromise the defendant's obligation to pay the balance of any remaining civil liabilities, including tax, additional tax, additions to tax, interest, and penalties owed to the IRS for the time periods covered by this agreement or any other time period.

(i) The defendant agrees that, unless the Director of the Administrative Office of the United States Courts directs otherwise, all payments made pursuant to the Court's restitution order are to be sent only to the Clerk of Court at the following address:

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IRS RACS
Attn: Mail Stop 6261, Restitution
333 W. Pershing Ave.
Kansas City, MO 64108




(j) With each payment to the Clerk of the Court made pursuant to the Court's restitution order, the defendant will provide the following information:

- The defendant's name and Social Security number;
 - The district court docket number assigned to this case;
 - Tax year(s) or period(s) for which restitution has been ordered;
- and
- A statement that the payment is being submitted pursuant to the district court's restitution order.

The defendant agrees to include a request that the Clerk of the Court send the information, along with the payments, to the appropriate office of the Internal Revenue Service.

(k) The defendant also agrees to send a notice of any payments made pursuant to this agreement, including the information listed in the previous paragraph, to the IRS at the following address:

Internal Revenue Service
Attn: MPU, STOP151 (Restitution)
P.O. Box 47-421
Doraville, GA 30362

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(l) The defendant understands that the defendant is not entitled to credit with the IRS for any payment sent to an incorrect address or accompanied by incomplete or inaccurate information, unless and until any payment is actually received by the Internal Revenue Service and identified by it as pertaining to the defendant's particular liability.

5. Admission of Guilt: The defendant will plead guilty because the defendant is guilty of the charges contained in counts I, VII and VIII of the second superseding indictment.

Count I

In pleading guilty to count I, the defendant acknowledges that:

First, the defendant knowingly 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, promises or omitted facts;

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

   
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Fourth, the defendant used, or caused to be used, wire, radio, or television communication in interstate or foreign commerce to carry out or attempt to carry out an essential part of the scheme.

Count VII

In pleading guilty to count VII, the defendant acknowledges that:

First, the defendant knowingly engaged in a monetary transaction;

Second, the defendant knew the transaction involved criminally derived property;

Third, the property had a value greater than \$10,000;

Fourth, the property was, in fact, derived from wire fraud; and

Fifth, the transaction occurred in the United States.

Count VIII

In pleading guilty to count VIII, the defendant acknowledges that:

First, the defendant owed federal income tax for the tax year 2013;

Second, the defendant made an affirmative attempt to evade or defeat payment of the income tax; and

Third, that in attempting to evade or defeat such tax, the defendant acted willfully.

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6. Waiver of Rights by Plea:

(a) The government has a right to use against the defendant, in a prosecution for perjury or false statement, any statement given under oath during the plea colloquy.

(b) The defendant has the right to plead not guilty or to persist in a plea of not guilty.

(c) The defendant has the right to a jury trial unless, by written waiver, the defendant consents to a non-jury trial. The United States must also consent and the Court must approve a non-jury trial.

(d) The defendant has the right to be represented by counsel and, if necessary, have the Court appoint counsel at trial and at every other stage of these proceedings.

(e) If the trial is a jury trial, the jury would be composed of 12 laypersons selected at random. The defendant and the defendant's attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict unless, after hearing

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all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt.

(f) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not the judge was persuaded of the defendant's guilt beyond a reasonable doubt.

(g) At a trial, whether by a jury or a judge, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those government witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence. If the witnesses for the defendant would not appear voluntarily, their appearance could be mandated through the subpoena power of the Court.

(h) At a trial, there is a privilege against self-incrimination so that the defendant could decline to testify and no inference of guilt could be drawn from the refusal to testify. Or the defendant could exercise the choice to testify.

(i) If convicted, and within 14 days of the entry of the Judgment and Commitment, the defendant would have the right to appeal the conviction to the Ninth Circuit Court of Appeals for review to determine if any errors were made that would entitle the defendant to reversal of the conviction.

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(j) The defendant has a right to have the district court conduct the change of plea hearing required by Rule 11, Federal Rules of Criminal Procedure. By execution of this agreement, the defendant waives that right and agrees to hold that hearing before, and allow the Rule 11 colloquy to be conducted by, the U.S. Magistrate Judge, if necessary.

(k) If convicted in this matter, a defendant who is not a citizen of the United States may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

The defendant understands that by pleading guilty pursuant to this agreement, the defendant is waiving all of the rights set forth in this paragraph. The defendant's attorney has explained those rights and the consequences of waiving those rights.

7. **Recommendations:** The United States will recommend the defendant's offense level be decreased by two levels for acceptance of responsibility, pursuant to USSG §3E1.1(a), unless the defendant is found to have obstructed justice prior to sentencing, pursuant to USSG §3C1.1, or acted in any way inconsistent with acceptance of responsibility. The United States will move for an additional one-level reduction, pursuant to USSG §3E1.1(b), if appropriate under the Guidelines. The United States will also recommend that the probation office not apply the two-level enhancement for obstruction of justice under USSG

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§3C1.1. The parties reserve the right to make any other arguments at the time of sentencing. The defendant understands that the Court is not bound by these recommendations.

8. Sentencing Guidelines: Although advisory, the parties agree that the U.S. Sentencing Guidelines must be applied, and a calculation determined, as part of the protocol of sentencing to determine what sentence will be reasonable.

9. Waiver of Appeal of the Sentence – General: The defendant understands the law provides a right to appeal and collaterally attack the sentence imposed in this case. 18 U.S.C. § 3742(a); 28 U.S.C. §§ 2241, 2255. Based on the concessions made by the United States, the defendant knowingly waives any right to appeal or collaterally attack any aspect of the sentence, including conditions of probation or supervised release. This waiver includes challenges to the constitutionality of any statute of conviction and arguments the admitted conduct does not fall within any statute of conviction. This waiver does not prohibit the right to pursue a collateral challenge alleging ineffective assistance of counsel.

10. FOIA Waiver: The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the

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Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

11. Voluntary Plea: The defendant and the defendant's attorney acknowledge that no threats, promises, or representations have been made to induce the defendant to plead guilty, and that this agreement is freely and voluntarily endorsed by the parties.

12. Disclosure of Financial Information: The defendant authorizes the U.S. Probation Office to release to the Financial Litigation Unit of the U.S. Attorney's Office all documents and financial information provided by the defendant to the U.S. Probation Office and any information obtained by the U.S. Probation Office about the defendant through its investigation. The defendant further agrees to fully complete a financial statement in the form prescribed by the U.S. Attorney's Office, provide financial documents as requested, and submit to a debtor's exam if deemed appropriate by the U.S. Attorney's Office, in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court. The defendant consents to being immediately placed on the Treasury Offset Program to help meet the defendant's obligation to pay restitution and/or a fine.

13. Detention/Release After Plea: The United States agrees that it will not move for detention pending sentencing, but will defer to the discretion of the Court the decision as to whether the defendant meets the conditions of 18 U.S.C.

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§ 3143(a)(1) or (2), and whether the defendant has clearly shown exceptional reasons why detention is not appropriate. 18 U.S.C. § 3145(c). The United States is obligated to advise the Court of the appropriate legal standards that relate to the defendant's eligibility for post-conviction release. The defendant acknowledges that obligation and understands that advising the Court as to the law and facts is not an abrogation of its agreement not to request remand.

14. Breach: If the defendant breaches the terms of this agreement, or commits any new criminal offenses between signing this agreement and sentencing, the U.S. Attorney's Office is relieved of its obligations under this agreement, but the defendant may not withdraw the guilty plea.

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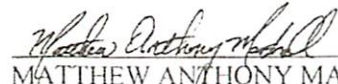
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15. **Entire Agreement:** Any statements or representations made by the United States, the defendant, or defense counsel prior to the full execution of this plea agreement are superseded by this plea agreement. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. This plea agreement constitutes the entire agreement between the parties. Any term or condition which is not expressly stated as part of this plea agreement is not to be considered part of the agreement.

LEIF M. JOHNSON
Acting United States Attorney


TIMOTHY J. RACICOT
Assistant U. S. Attorney
Date: 11/4/21


RYAN G. WELDON
Assistant U. S. Attorney
Date: 11/4/21


MATTHEW ANTHONY MARSHALL
Defendant
Date: 3/10/2021


JUSTIN K. GELFAND
Defense Counsel
Date: 11/4/2021

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AUSA MAM JKG Date