

FILED

DEC 8 2016

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

1 PHILLIP A. TALBERT
Acting United States Attorney
2 BRIAN A. FOGERTY
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
Facsimile: (916) 554-2900
5

6 Attorneys for Plaintiff
7 United States of America

8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14 v.
15 KEVIN LEE CO,
16 Defendant.

CASE NO. 2:16-CR-00167 TLN
PLEA AGREEMENT

17 I. INTRODUCTION

18 A. Scope of Agreement.

19 The information in this case charges the defendant with violations of 18 U.S.C. § 1343 – Wire
20 Fraud (8 counts); and 18 U.S.C. § 1956(a)(1)(B)(i) – Money Laundering (3 counts). This document
21 contains the complete plea agreement between the United States Attorney’s Office for the Eastern
22 District of California (the “government”) and the defendant regarding this case. This plea agreement is
23 limited to the United States Attorney’s Office for the Eastern District of California and cannot bind any
24 other federal, state, or local prosecuting, administrative, or regulatory authorities.
25

26 B. Court Not a Party.

27 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
28 discretion of the Court, and the Court may take into consideration any and all facts and circumstances

[Handwritten signatures]

1 concerning the criminal activities of defendant, including activities which may not have been charged in
2 the information. The Court is under no obligation to accept any recommendations made by the
3 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
4 including the statutory maximum stated in this plea agreement.

5 If the Court should impose any sentence up to the maximum established by the statute, the
6 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
7 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
8 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
9 receive.

10 **II. DEFENDANT'S OBLIGATIONS**

11 **A. Guilty Plea.**

12 The defendant will plead guilty to Count One, Wire Fraud in violation of 18 U.S.C. § 1343, and
13 Count Nine, Money Laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i). The defendant agrees that
14 he is in fact guilty of these charges and that the facts set forth in the Factual Basis for Plea attached
15 hereto as Exhibit A are accurate.

16 The defendant agrees that this plea agreement will be filed with the Court and become a part of
17 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
18 pleas should the Court not follow the government's sentencing recommendations.

19 The defendant agrees that the statements made by him in signing this Agreement, including the
20 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
21 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
22 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
23 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
24 Agreement generally.

25 **1. Waiver of Indictment:**

26 The defendant acknowledges that under the United States Constitution he is entitled to be
27 indicted by a grand jury on the charges to which he is pleading guilty and that pursuant to Fed.R.Crim.P.
28 7(b) he agrees to waive any and all rights he has to being prosecuted by way of indictment to the charges



1 set forth in the information. The defendant agrees that at a time set by the Court, he will sign a written
2 waiver of prosecution by Indictment and consent to proceed by Information rather than by Indictment.

3 **B. Restitution.**

4 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of
5 certain offenses. The defendant agrees the conduct to which he is pleading guilty requires mandatory
6 restitution pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii), and agrees to pay restitution to the victim, Holt
7 of California, for the total loss to Holt of California as a result of the scheme in the amount of
8 \$4,542,236.08. Restitution payments shall be by cashier's or certified check made payable to the Clerk
9 of the Court.

10 **C. Fine.**

11 The defendant reserves the right to argue to Probation and at sentencing that he is unable to pay a
12 fine, and that no fine should be imposed. The defendant understands that it is his burden to affirmatively
13 prove that he is unable to pay a fine, and agrees to provide a financial statement under penalty of perjury
14 to the Probation Officer and the government in advance of the issuance of the draft Presentence
15 Investigation Report, along with supporting documentation. The government retains the right to oppose
16 the waiver of a fine. If the Court imposes a fine, the defendant agrees to pay such fine if and as ordered
17 by the Court, up to the statutory maximum fine for the defendant's offenses. Any fine payments shall be
18 by cashier's or certified check made payable to the Clerk of the Court.

19 **D. Special Assessment.**

20 The defendant agrees to pay a special assessment of \$200 at the time of sentencing by delivering
21 a check or money order payable to the United States District Court to the United States Probation Office
22 immediately before the sentencing hearing. The defendant understands that this plea agreement is
23 voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the
24 defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money
25 to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

26 **E. Violation of Plea Agreement by Defendant/Withdrawal of Pleas.**

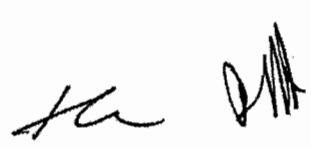
27 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
28 his plea, this plea agreement is voidable at the option of the government. If the government elects to

Handwritten signature and initials in black ink, appearing to be 'K. O. N.' or similar, located at the bottom right of the page.

1 void the agreement based on the defendant's violation, the government will no longer be bound by its
2 representations to the defendant concerning the limits on criminal prosecution and sentencing as set
3 forth herein. A defendant violates the plea agreement by committing any crime or providing or
4 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
5 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting
6 obstruction of justice. The government also shall have the right (1) to prosecute the defendant on any of
7 the counts to which he pleaded guilty; (2) to reinstate any counts that may be dismissed pursuant to this
8 plea agreement; and (3) to file any new charges that would otherwise be barred by this plea agreement.
9 The defendant shall thereafter be subject to prosecution for any federal criminal violation of which the
10 government has knowledge. The decision to pursue any or all of these options is solely in the discretion
11 of the United States Attorney's Office.

12 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
13 defenses that the defendant might have to the government's decision. Any prosecutions that are not
14 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
15 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
16 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
17 The defendant agrees not to raise any objections based on the passage of time with respect to such
18 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
19 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
20 of the date of this plea agreement. The determination of whether the defendant has violated the plea
21 agreement will be under a probable cause standard.

22 In addition, (1) all statements made by the defendant to the government or other designated law
23 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
24 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
25 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
26 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
27 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
28 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.



1 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

2 **F. Forfeiture.**

3 The defendant agrees to forfeit to the United States voluntarily and immediately all of his right
4 title and interest to any and all assets subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C), 28
5 U.S.C. § 2461(c), and 18 U.S.C. § 982(a)(1). Those assets include, but are not limited to, the following:

- 6 1. Approximately \$3,000 in bitcoin; *
- 7 2. A money judgment in the amount of \$4,894,551.61.

8 The defendant agrees that the listed assets constitutes property involved in, or proceeds of,
9 violations of 18 U.S.C. § 1343 and 18 U.S.C. § 1956(a)(1)(B)(i). The defendant agrees to fully assist
10 the government in the forfeiture of the listed assets and to take whatever steps are necessary to pass clear
11 title to the United States, including liquidating any digital assets. The defendant shall not sell, transfer,
12 convey, or otherwise dispose of any of his assets, including but not limited to, the above-listed assets.

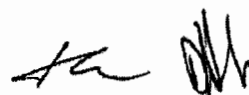
13 The defendant also voluntarily stipulates and agrees that as part of his sentence the Court may,
14 pursuant to Fed. R. Crim. P. 32.2(b), order a forfeiture money judgment in an amount up to
15 \$4,894,551.61, less any forfeited funds.

16 The defendant agrees not to file a claim to any of the listed property in any civil proceeding,
17 administrative or judicial, which may be initiated. The defendant agrees to waive his right to notice of
18 any forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a
19 claim in that forfeiture proceeding.

20 The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of
21 assets. The defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses
22 to the forfeiture of these assets in any proceeding. The defendant agrees to waive any jeopardy defense,
23 and agrees to waive any claim or defense under the Eighth Amendment to the United States
24 Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United States,
25 the State of California or its subdivisions.

26 The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any
27 defenses or defects that may pertain to the forfeiture.

28



1 **G. Asset Disclosure.**

2 The defendant agrees to make a full and complete disclosure of his assets and financial
3 condition, and will complete the United States Attorney's Office's "Authorization to Release
4 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
5 of plea, including supporting documentation. The defendant also agrees to have the Court enter an order
6 to that effect. The defendant understands that if he fails to complete truthfully and provide the described
7 documentation to the United States Attorney's office within the allotted time, he will be considered in
8 violation of the agreement, and the government shall be entitled to the remedies set forth in section II.E
9 above.

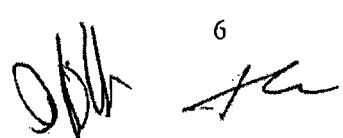
10 **H. Agreement to Cooperate.**

11 The defendant agrees to cooperate fully with the government and any other federal, state, or local
12 law enforcement agency, as directed by the government. As used in this plea agreement, "cooperation"
13 requires the defendant: (1) to respond truthfully and completely to all questions, whether in interviews,
14 in correspondence, telephone conversations, before a grand jury, or at any trial or other court
15 proceeding; (2) to attend all meetings, grand jury sessions, trials, and other proceedings at which the
16 defendant's presence is requested by the government or compelled by subpoena or court order; (3) to
17 produce voluntarily any and all documents, records, or other tangible evidence requested by the
18 government; (4) not to participate in any criminal activity while cooperating with the government; and
19 (5) to disclose to the government the existence and status of all money, property, or assets, of any kind,
20 derived from or acquired as a result of, or used to facilitate the commission of, the defendant's illegal
21 activities or the illegal activities of any conspirators.

22 **III. THE GOVERNMENT'S OBLIGATIONS**

23 **A. Dismissals/Other Charges.**

24 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
25 remaining counts in the pending information. The government also agrees not to reinstate any dismissed
26 count except if this agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation
27 of Plea Agreement by Defendant/Withdrawal of Plea(s)), III.B.3 (Reduction of Sentence for
28 Cooperation), VI.B (Estimated Guideline Calculation), and VII.B (Waiver of Appeal and Collateral

6


1 Attack) herein.

2 **B. Recommendations.**

3 1. Incarceration Range.

4 The government will recommend that the defendant be sentenced to the low end of the
5 applicable guideline range as determined by the Court.

6 2. Acceptance of Responsibility.

7 The government will recommend a two-level reduction (if the offense level is less than
8 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if
9 the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
10 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of
11 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
12 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
13 preparation of the pre-sentence report or during the sentencing proceeding.

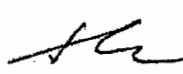

14 3. Reduction of Sentence for Cooperation.

15 The government agrees to recommend at the time of sentencing that the defendant's
16 sentence of imprisonment be reduced by up to 50% of the applicable guideline sentence if he provides
17 substantial assistance to the government, pursuant to U.S.S.G. § 5K1.1. The defendant understands that
18 he must comply with paragraphs II.H and not violate this plea agreement as set forth in paragraph II.E
19 herein. The defendant understands that it is within the sole and exclusive discretion of the government
20 to determine whether the defendant has provided substantial assistance.

21 The defendant understands that the government may recommend a reduction in his
22 sentence of less than 50% or no reduction at all; depending upon the level of assistance the government
23 determines that the defendant has provided.

24 The defendant further understands that a motion pursuant to U.S.S.G. § 5K1.1 is only a
25 recommendation and is not binding on the Court, that this plea agreement confers no right upon the
26 defendant to require that the government make a § 5K1.1 motion, and that this plea agreement confers
27 no remedy upon the defendant in the event that the government declines to make a § 5K1.1 motion. In
28 particular, the defendant agrees not to try to file a motion to withdraw his guilty pleas based on the fact

PLEA AGREEMENT

 7 

1 Second, the defendant knew that the property represented the proceeds of some
2 form of unlawful activity; and

3 Third, the defendant knew that the transaction was designed in whole or in part to
4 conceal or disguise the nature, location, source, ownership, or control of the proceeds.

5 The defendant fully understands the nature and elements of the crimes charged in the information
6 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
7 his attorney.

8 V. MAXIMUM SENTENCE

9 A. Maximum Penalty.

10 The maximum sentence that the Court can impose for Wire Fraud, in violation of 18 U.S.C. §
11 1343, is 20 years of incarceration, a fine of \$250,000, a 5-year period of supervised release and a special
12 assessment of \$100. The maximum sentence that the Court can impose for Money Laundering, in
13 violation of 18 U.S.C. § 1956(a)(1)(B)(i), is 20 years of incarceration, a fine of \$500,000 or twice the
14 value of the property involved in the transaction, a 5-year period of supervised release and a special
15 assessment of \$100. By signing this plea agreement, the defendant also agrees that the Court can order
16 the payment of restitution for the full loss caused by the defendant's wrongful conduct. The defendant
17 agrees that the restitution order is not restricted to the amounts alleged in the specific counts to which he
18 is pleading guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in
19 any present or future bankruptcy proceeding any restitution imposed by the Court.

20 B. Violations of Supervised Release.

21 The defendant understands that if he violates a condition of supervised release at any time during
22 the term of supervised release, the Court may revoke the term of supervised release and require the
23 defendant to serve up to 3 additional years of imprisonment.

24 VI. SENTENCING DETERMINATION

25 A. Statutory Authority.

26 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
27 must take them into account when determining a final sentence. The defendant understands that the
28 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the



1 Sentencing Guidelines and must take them into account when determining a final sentence. The
2 defendant further understands that the Court will consider whether there is a basis for departure from the
3 guideline sentencing range (either above or below the guideline sentencing range) because there exists
4 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
5 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
6 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
7 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

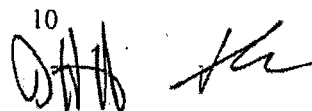
8 **B. Estimated Guideline Calculation.**

9 The government and the defendant agree that the following is their present best estimate of the
10 sentencing guidelines variables. These estimates shall not be binding on the Court, the Probation Office,
11 or the parties:

12 //
13 //
14 //
15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //

24
25
26
27
28

PLEA AGREEMENT

10


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

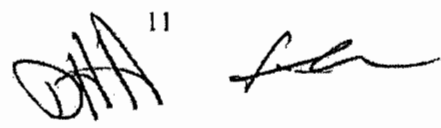
1. Base Offense Level: The government and the defendant estimate that the base offense level is 7 under U.S.S.G. § 2B1.1(a)(1).
2. Specific Offense Characteristic Adjustments:
 - a. Defendant's offense level should be increased by 18 levels because the offense involved a loss of more than \$3.5 million, pursuant to U.S.S.G. § 2B1.1(b)(1)(J).
 - b. Defendant's offense level should be increased by 2 levels because the offense involved the use of sophisticated means, pursuant to U.S.S.G. § 2B1.1(b)(10)(C).
 - c. Defendant's offense level should be increased by 2 levels because he was an organizer of the criminal activity, pursuant U.S.S.G. § 3B1.1.
 - d. Defendant's offense level should be increased by 2 levels because he abused a position of trust, pursuant to U.S.S.G. § 3B1.3.
 - e. Defendant's offense level should be increased by 2 levels because he has pleaded guilty to 18 U.S.C. § 1956, pursuant to U.S.S.G. § 2S1.1(b)(2)(B).
3. Acceptance of Responsibility: See paragraph III.B.2 above
4. Criminal History: The parties agree that the defendant's criminal history will be determined by the Court.
5. Departures or Other Enhancements or Reductions:

The parties agree that they will not seek or argue in support of any other specific offense characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of Responsibility"), or cross-references, except that the government may move for a departure or an adjustment based on the defendant's cooperation (§5K1.1) or post-plea obstruction of justice (§3C1.1). Both parties agree not to move for, or argue in support of, any departure from the Sentencing Guidelines. The defendant is free to request a variance from the Sentencing Guidelines, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), and recommend whatever sentence he believes is appropriate under 18 U.S.C. § 3553(a). The government will recommend that the defendant be sentenced to the low end of the applicable guideline range for his offenses as determined by the Court.

VII. WAIVERS

A. Waiver of Constitutional Rights.

The defendant understands that by pleading guilty he is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to

11


1 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
2 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
3 compelled to incriminate himself.

4 **B. Waiver of Appeal and Collateral Attack.**

5 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
6 conviction, and sentence. The defendant agrees as part of his pleas, however, to give up the right to
7 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
8 exceed the statutory maximum for the offenses to which he is pleading guilty. The defendant
9 specifically gives up the right to appeal any order of restitution the Court may impose.

10 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
11 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
12 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
13 understands that these circumstances occur infrequently and that in almost all cases this Agreement
14 constitutes a complete waiver of all appellate rights.

15 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
16 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
17 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

18 Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever
19 attempts to vacate his pleas, dismiss the underlying charges, or modify or set aside his sentence on any
20 of the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.E
21 herein.

22 **C. Waiver of Attorneys' Fees and Costs.**

23 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
24 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
25 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
26 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
27 charges previously dismissed).

28 //

1 **D. Impact of Plea on Defendant's Immigration Status.**

2 Defendant recognizes that pleading guilty may have consequences with respect to his
3 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes
4 are removable offenses, including offenses to which the defendant is pleading guilty. The defendant and
5 his counsel have discussed the fact that the charge to which the defendant is pleading guilty is an
6 aggravated felony, or a crime that is likely to be determined to be an aggravated felony under 8 U.S.C. §
7 1101(a)(43), and that while there may be arguments that defendant can raise in immigration proceedings
8 to avoid or delay removal, it is virtually certain that defendant will be removed. Removal and other
9 immigration consequences are the subject of a separate proceeding, however, and defendant understands
10 that no one, including his attorney or the district court, can predict to a certainty the effect of his
11 conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty
12 regardless of any immigration consequences that his plea may entail, even if the consequence is his
13 automatic removal from the United States.

14 **VIII. ENTIRE PLEA AGREEMENT**

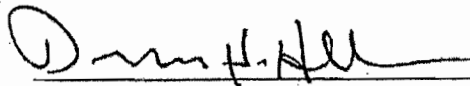
15 Other than this plea agreement, no agreement, understanding, promise, or condition between the
16 government and the defendant exists, nor will such agreement, understanding, promise, or condition
17 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
18 counsel for the United States.

19 **IX. APPROVALS AND SIGNATURES**

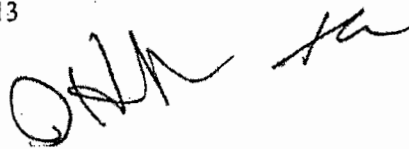
20 **A. Defense Counsel.**

21 I have read this plea agreement and have discussed it fully with my client. The plea agreement
22 accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to
23 plead guilty as set forth in this plea agreement.

24 Dated: 9-27-16

25 
26 DONALD H. HELLER
27 Attorney for Defendant

28

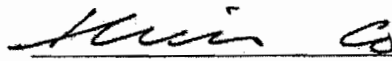


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Defendant:

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated: 9-27-16



KEVIN LEE CO
Defendant

C. Attorney for United States:

I accept and agree to this plea agreement on behalf of the government.

Dated: 12/8/16

PHILLIP A. TALBERT
Acting United States Attorney



BRIAN A. FOGERTY
Assistant United States Attorney

1 EXHIBIT "A"

2 Factual Basis for Pleas

3 From in or around May 2008, through in or around March 2015, KEVIN LEE CO engaged in a
4 scheme to defraud his then-employer Holt of California ("Holt") by conducting hundreds of
5 unauthorized credit card transactions on Holt's credit account. As a result of CO's conduct, Holt
6 suffered a loss of \$4,894,551.61.

7 CO was employed by Holt from in or around 2006, through on or about April 17, 2015. From in
8 or around 2009, until his termination from the company on April 17, 2015, CO served as Holt's
9 controller. As controller, CO was responsible for managing Holt's accounting department.

10 Holt had a commercial credit account with Bank of the West, which was a financial institution
11 that was insured by the Federal Deposit Insurance Corporation. Holt used this credit account to pay its
12 operating expenses. The account served as an alternative to a traditional accounts payable system,
13 allowing Holt to route its operating expenses through a single Bank of the West credit account. The
14 account was called a Purchasing Card ("P-Card") account.

15 From in or around 2009, until on or about April 17, 2015, CO was responsible for managing
16 Holt's P-Card account. CO reviewed monthly P-Card statements and invoices. CO approved the
17 issuance of P-Cards for Holt employees. CO was also a P-Card cardholder.

18 During the course of the scheme, CO took steps to hide his and co-schemer's unauthorized
19 charges on Holt's P-Card account. As a manager in Holt's accounting department, CO had access to
20 Holt's accounting records. CO used that access to manipulate and falsify Holt's records regarding the P-
21 Card account. CO concealed fraudulent transactions referenced in Bank of the West account records,
22 listing the charges as debits on the rolling balance under the Bank of West vendor account. In addition,
23 on more than one occasion, Bank of the West personnel noticed suspicious charges on Holt's P-Card
24 account—charges that were part of CO's scheme—and contacted CO to inquire about the charges. CO
25 falsely assured Bank of the West personnel that the charges were authorized by Holt.

26 There were at least three iterations of CO's scheme to defraud Holt:

27 //

28 //

1 **I. CO's Unauthorized Use of the Holt P-Card for Personal Expenses**

2 As to Count One, CO engaged in the following conduct in violation of 18 U.S.C. § 1343 – Wire
3 Fraud:

4 On or about May 2, 2012, CO conducted a P-Card transaction using the Holt P-Card assigned to
5 him to purchase \$7,200 in goods and services from Precision Lawn & Garden. The P-Card transaction
6 was initiated in Sacramento County, California, and processed electronically in Colorado by Bank of the
7 West's third-party credit card processor, First Data. When CO conducted this P-Card transaction, he
8 knew that the transaction was not authorized by Holt and that it was not for a Holt business-related
9 purpose.

10 From in or around May 2008, through in or around March 2015, CO conducted many more
11 unauthorized P-Card transactions. For example, he used the Holt P-Card assigned to him and others to
12 pay for:

- 13 • Luxury cars;
- 14 • Approximately \$1 million in purchases for the online video game Game of War;
- 15 • Plastic surgery expenses;
- 16 • Membership dues at Whitney Oaks Golf Club in Rocklin, California;
- 17 • Home furniture;
- 18 • Season ticket seat licenses for the San Francisco 49ers; and
- 19 • Season tickets for the Sacramento Kings.

20 CO made these and other purchases knowing that the transactions were not authorized by Holt.

21 **II. CO's Unauthorized Use of the Holt P-Card for Payments to SortUsACar**

22 From in or around June 2010, through in or around August 2014, CO and Individual A
23 conducted unauthorized P-Card transactions with SortUsACar. SortUsACar was a luxury auto dealer,
24 broker and consignment business located in Sacramento, California. Individual A owned SortUsACar.

25 CO and Individual A devised a scheme that involved conducting high dollar value P-Card
26 transactions with the Holt P-Card assigned to CO. CO and Individual A also conducted high dollar
27 value P-Card transactions using P-Cards assigned to two former Holt employees. SortUsACar was the
28 payee for these transactions. Using the proceeds of these P-Card transactions, CO and Individual A

1 purchased cars for CO and automotive repair equipment for Individual A’s SortUsACar. CO and
 2 Individual A knew that the P-Card transactions that they conducted with SortUsACar were not
 3 authorized by Holt, and that the transactions were not for any Holt business-related purpose. As a result
 4 of CO’s and Individual A’s conduct, CO and Individual A defrauded Holt of approximately \$500,000.

5 **III. CO’s and Individual B’s Unauthorized Use of the Holt P-Card Account**

6 From in or around May 2008, through December 2013, CO and Individual B participated in a
 7 scheme to conduct unauthorized P-Card transactions for Individual B’s benefit. CO obtained a Holt P-
 8 Card for Individual B to use for personal expenses. Individual B was not a Holt employee and
 9 Individual B was not authorized by Holt to conduct P-Card transactions. Individual B used the Holt P-
 10 Card to conduct unauthorized transactions, which were charged to Holt’s Bank of the West account. CO
 11 used his knowledge and authority as Holt’s controller to hide Individual B’s fraudulent P-Card
 12 transactions. As a result of CO’s and Individual B’s conduct, CO and Individual B defrauded Holt of
 13 approximately \$49,000.

14 **IV. CO’s and Individual A’s Money Laundering Scheme**

15 As to Count Nine, CO engaged in the following conduct in violation of 18 U.S.C. §
 16 1956(a)(1)(B)(i) – Money Laundering:

17 From in or around November 2013, through in or around December 2013, CO and Individual A
 18 conducted financial transactions knowing that the transactions were designed in whole or in part to
 19 conceal or disguise the nature, location, source, ownership, or control of the proceeds of CO’s and
 20 Individual A’s scheme to defraud Holt. On the dates set forth below, CO and Individual A conducted
 21 unauthorized P-Card transactions, transferring funds from Bank of the West to SortUsACar’s Wells
 22 Fargo, N.A. account.

Date of Holt P-Card Transaction	Amount of Holt P-Card Transaction
November 14, 2013	\$9,870
November 14, 2013	\$9,600
December 18, 2013	\$9,450
December 18, 2013	\$7,850

1 CO and Individual A were aware that the foregoing P-Card transactions were not authorized by
 2 Holt and that the transactions were not conducted for any Holt business-related purpose. The Holt P-
 3 Card transactions were initiated in the Eastern District of California, and processed electronically in
 4 Colorado.

5 CO and Individual A devised a plan to conduct the following financial transactions in order to
 6 provide CO with a portion of the proceeds of the foregoing fraudulent P-Card transactions while
 7 disguising or concealing the fact that the funds were fraud proceeds from unauthorized Holt P-Card
 8 transactions. CO and Individual A accomplished their plan by transferring the personal checks listed
 9 below from Individual A to CO on the dates listed below.

Date	Financial Transaction
November 16, 2013	Transfer of check number 1342, which was payable to CO in the amount of \$4,200, and drawn on SortUsACar's Wells Fargo Bank account number xxxxxx4720
November 16, 2013	Transfer of check number 1343, which was payable to CO in the amount of \$4,800, and drawn on SortUsACar's Wells Fargo Bank account number xxxxxx4720
December 19, 2013	Transfer of check number 1359, which was payable to CO in the amount of \$4,500, and drawn on SortUsACar's Wells Fargo Bank account number xxxxxx4720

17 Wells Fargo Bank, N.A. is a financial institution that was insured by the Federal Deposit
 18 Insurance Corporation.

19 I have read and carefully reviewed the Factual Basis for Pleas with my attorney. I agree that as it
 20 concerns my conduct it is true and correct. I also agree that if this matter proceeded to trial, the United
 21 States could establish each of the facts contained within the Factual Basis for Pleas beyond a reasonable
 22 doubt, and that those facts satisfy the elements of the offense to which I am pleading guilty.

24 Dated:

25 12-8-16



25 KEVIN LEE CO
 26 Defendant