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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO



Criminal Case No. 09-cr-00269-WYD

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. DAN KHAU TANG,

Defendant.

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**RULE 11(c)(1)(B) PLEA AGREEMENT  
AND STIPULATION OF FACTS**

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The United States of America, by District of Colorado Acting United States Attorney David M. Gaouette, through Assistant United States Attorney Stephanie Podolak, and the defendant DAN KHAU TANG, personally and by his attorneys Michael Axt, Esq., and Gene Ciancio, Esq., submit the following Plea Agreement and Stipulation of Facts pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure and District Court of Colorado Local Rule 11.1.

It is the intention of the parties to resolve all pending federal criminal issues, including any and all tax issues, between the defendant and the government through the resolution of this captioned case.

**I. PLEA AGREEMENT**

1. The defendant agrees to plead guilty to Count One of the Information captioned 09-cr-00269 WYD which charges that on or about and between January 1, 2007, and

February 16, 2008, within the State and District of Colorado, the defendant Dan Khau Tang, and others, did knowingly and intentionally conspire to conduct and attempt to conduct a series of financial transactions affecting interstate commerce, which financial transactions involved the proceeds from specified unlawful activity, to wit, the cultivation and distribution of marijuana, knowing that the series of financial transactions were designed, in whole and in part, to conceal and disguise the nature, location, source, ownership, and control of the proceeds from said specified unlawful activity and knowing that property involved in the financial transactions represented the proceeds of the specified unlawful activity. All in violation of 18 U.S.C. §1956(a)(1)(B)(I) and §1956(h).

2. The defendant further agrees to admit the forfeiture violation contained in Count Two of the Information and to forfeit any and all of his interest in the following assets, all of which are proceeds of and involved in the the illegal activity to which he is pleading guilty:

- a. \$17,797.00 in United States currency
- b. \$320,120.00 in United States currency
- c. \$170,000.00 in United States currency
- d. \$400,100.00 in United States currency
- e. \$44,583.75 check converted to cash

3. As part of this agreement, the government will not pursue charges against Mr. Tang's wife, Ying Li, who agrees to civilly forfeit any right, title, and interest she has in the below-specified assets enumerated in Count Two of the Information:

- a. \$529,550.00 in United States currency
- b. \$1,156.26 seized from Bank of the West  
Account # 915072557

- c. \$160,162.85 seized from Wells Fargo  
Account # 1342733224
- d. \$17,356.51 seized from Bank of the West  
Account # 915059729
- e. \$40,000.00 seized from Wells Fargo  
Account # 3393125673
- f. \$47,534.00 seized from Wells Fargo  
Account # 5737570217
- g. \$59,526.66 Seized from Wells Fargo  
Account # 5737570688
- h. \$49,671.01 seized from Bank of the West  
Account # 915001374
- i. \$1,472.26 Seized from Wells Fargo  
Account # 6299055696

Further, Mr. Tang agrees not to file a claim against any of the items his wife, Ying Li, has agreed to civilly forfeit.

4. In consideration of this agreement, the defendant agrees that he shall continue to assist the government in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, regardless of their nature or form, in all assets, including real and personal property, cash and other monetary instruments, wherever located, which the defendant or others to his knowledge have accumulated as a result of illegal activities. Such assistance will involve an agreement on defendant's part to the entry of an order enjoining the transfer or encumbrance of assets which may be subject to forfeiture. Additionally, the defendant agrees to identify to the best of his ability as being subject to forfeiture all such assets, and to assist in the transfer of such property to the United States by delivery to the government upon request, all

necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds and any and all other documents necessary to deliver good and marketable title to said property. It is also agreed upon that the defendant's criminal forfeiture liability is \$952,600.75, the total dollar amount as set forth in Paragraph 2, above.

5. The defendant further agrees that, should any family member, associate, or acquaintance attempt to claim any such property, the defendant will provide necessary information to the government regarding any such claim to the best of his ability.

6. The defendant also agrees to waive any applicable time limits for the initiation of administrative forfeiture and/or further notification of any judicial or administrative forfeiture proceedings brought against said assets, and the defendant agrees to waive any appeal from the forfeiture.

7. In consideration of this plea, the government agrees that there will be no further federal criminal or civil charges brought against the defendant for any conduct which has been disclosed by the defendant and is known to the government at the time of the signing of this plea agreement. This includes any criminal tax matters or any referral by the IRS for civil or administrative tax matters.

8. The government agrees to file a motion requesting that the defendant receive a three level decrease for acceptance of responsibility pursuant to United States Sentencing Guideline 3E1.1(a) and (b). The government further agrees that any information provided by the defendant in the course of his cooperation concerning unlawful activities of others, including self incriminating information pursuant to this agreement, will not be used against him in determining the applicable sentencing guideline.

9. The government recommends imposition of a non-guideline statutory sentence outside of the applicable sentencing guideline range.

10. The government also agrees that it will not object to the filing of a motion by the defendant for a downward departure, variance, and/or a non-guideline statutory sentence outside the otherwise applicable sentencing guideline range.

11. The government further agrees to jointly recommend that the Court impose a non-guideline statutory sentence of not less than 11 months and not more than 30 months. The parties further agree that any sentence imposed may be satisfied by any one of the following: (1) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment; (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention provided that at least one month is satisfied by imprisonment; or (3) a sentence of imprisonment. The parties recognize that any variance, departure, or any non-guideline statutory sentence requested by the defendant and the government will be a recommendation to the Court and that the ultimate question of whether a variance, departure, or non-guideline statutory sentence is to be granted will rest solely within the discretion of the sentencing Court.

12. The defendant also acknowledges that he will not be able to withdraw his guilty plea in the event the Court elects not to grant any variance, downward departure, or non-guideline statutory sentence request made by the parties or rejects the sentencing recommendation requested by the parties.

**II. ELEMENTS OF THE OFFENSE**

13. The elements of the charge of conspiracy to launder monetary instruments are:
- a. That within the time-frame alleged in the Information, the defendant agreed with at least one other person to commit the crime of laundering monetary instruments and;
  - b. That the defendant entered into the agreement knowingly and intentionally;
  - c. The underlying elements of money laundering are:
    - (1) That an individual conducted or attempted to conduct a financial transaction, affecting interstate commerce, with the knowledge that the property involved in the transaction represented the proceeds of some form of specified unlawful activity;
    - (2) That the property involved in the transaction was in fact the proceeds of a specified unlawful activity; and
    - (3) That the transaction was conducted in whole or in part to conceal and disguise the nature, location, source or ownership of the proceeds of the specified unlawful activity.

**III. STATUTORY PENALTIES**

14. The maximum statutory penalty for a conviction on Count One for a violation of Title 18, United States Code, Section 1956(h), is a term of imprisonment of not more than 20 years, a fine not to exceed \$500,000 or twice the value of the property involved in the money laundering transactions. Pursuant to 18 U.S.C. Sections 3559(a)(3) and 3583(b)(2), there is a term of supervised release of not more than three years. There is no restitution.
15. The conviction may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury.
16. A violation of the conditions of probation or supervised release may result in

a separate prison sentence.

**IV. STIPULATION OF FACTUAL BASIS AND  
FACTS RELEVANT TO SENTENCING**

17. The parties agree that there is no dispute as to the material elements which establish a factual basis of the offense of conviction.

18. Pertinent facts are set out below in order to provide a factual basis of the plea and to provide facts which the parties believe are relevant. To the extent the parties disagree about the facts relevant to sentencing, the statement of facts identifies which facts are known to be in dispute at the time of the plea.

19. The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to sentencing in general.

20. In September 2007, the Drug Enforcement Administration ("DEA") and the North Metro Drug Task Force ("NMDTF") began an investigation which targeted a large scale Asian indoor marijuana cultivation and distribution organization in the Denver metropolitan area. The marijuana cultivation and distribution operation was spearheaded by members of Mr. Tang's immediate family including, but not limited to, his brothers Ming Yin Deng and Fayin Deng, and their wives Wo Mei Mo and Kelly Choung. Others involved in the cultivation operation included Eric Sen and Kim Dang, employees of the Heaven Dragon Restaurant owned by Mr. Tang.

21. Although this investigation ultimately led to the dismantlement of 25 indoor marijuana grows, the seizure of approximately 24,000 marijuana plants, and more than \$3,000,000 in currency, Mr. Tang's direct financial assistance was limited to providing down payments for homes that contained approximately 4,000 marijuana plants. Further, criminally laundered funds in

the amount of \$952,600.75 are attributable to Mr. Tang.

22. The investigation also disclosed, and the defendant provided information about the fact that Mr. Tang provided indirect financial assistance by falsely employing members of the organization in his restaurant, paying wages and reporting taxes in order to provide those organization members with an allegedly legitimate source of income. It was necessary for the organization members to show a legitimate source of income in order to obtain bank financing to purchase the properties used for growing marijuana. The government stipulates that these indirect funds provided by Mr. Tang cannot be readily calculated and, moreover, cannot be included in the criminal forfeiture calculation because the information was provided by Mr. Tang and is, therefore, covered by and excluded by Section 1B1.8 of the Sentencing Guidelines.

23. The investigation further revealed that members of the organization were amassing large amounts of cash as a result of their drug cultivation and needed to conceal and disguise the nature, location, source, ownership and control of the drug proceeds. In an effort to help his family members conceal money, Mr. Tang became involved in a money laundering conspiracy with Ming Yin Deng, Fayin Deng, Wo Mei Mo, Kelly Choung, and others.

24. It is stipulated that Mr. Tang has, for many years, run a very successful restaurant business. The members of the organization involved in marijuana cultivation believed detection of their unlawful activity would be less likely if someone with Mr. Tang's reputation were to maintain control of some of the proceeds from their unlawful activity.

25. Specifically, on four or five occasions between January 1, 2007, and February 16, 2008, Mr. Tang received approximately \$50,000 to \$60,000 from his brother Fayin Deng and his sister-in-law Kelly Choung. The total amount received was approximately \$250,000. During the



same time frame, Mr. Tang also received \$70,000 from another brother, Fu Yin Deng, who was also involved in the marijuana cultivation conspiracy. The total \$320,120 was proceeds from the cultivation, manufacture, and distribution of marijuana. The \$320,120 was hidden in Mr. Tang's home. At the time Mr. Tang received and hid the money, he knew or had reason to know that the money was the proceeds from the cultivation, manufacture, and distribution of marijuana. It was the intent of Mr. Tang, Fayin Deng, and Kelly Choung to use the drug proceeds to purchase real property in a strip mall in Longmont, Colorado.

26. On February 16, 2008, Mr. Tang was advised that the DEA and local police were in the process of raiding homes used by members of the marijuana cultivation and distribution operation and were seizing drugs and drug proceeds. In an effort to conceal and disguise the nature, location, source, ownership, and control of the drug proceeds, Mr. Tang collected the \$320,120, wrapped the money in garbage bags, placed the bags in the bed of his truck, and attempted to take the drug proceeds to the Heaven Dragon Restaurant. Mr. Tang was stopped by law enforcement and the money was seized.

27. The evidence would further show that, on February 20, 2008, Mr. Tang and his wife, Ying Li, and another individual identified as Victoria Howard, went to a VectraBank in Thornton, Colorado and removed approximately \$400,100.00 in United States currency from a safe deposit box. Ms. Howard was hired at the behest of Frederick Schaefer, Esq., an attorney representing Mr. Tang in matters related to Mr. Tang's restaurant. Mr. Schaefer suggested that Mr. Tang hire Ms. Howard to provide 24 hour-a-day security after Mr. Tang received what he believed to be an extortion letter. It was later determined that the letter was not a request for money but was instead a notice to Mr. Tang that he and others were under investigation by law enforcement.

28. After removing the money from the bank, Mr. Tang left the \$400,100.00 at Mr. Schaefer's office. Both Mr. Schaefer and Ms. Howard were retained from those funds. The government would show that the approximately \$400,100.00 had been given to Mr. Tang by his brother Ming Yin Deng and his sister-in-law Wo Mei Mo, and that the money was the proceeds from various marijuana grows. At the time Mr. Tang obtained the money from his family members and concealed the money in the safe deposit box, he knew that the money was the proceeds from marijuana cultivation and was trying to conceal and disguise the nature of the proceeds.

29. On February 20, 2008, the defendant took the money to the home of an individual identified as Noel Busck who is a former Mayor of the city of Thornton, Colorado, and asked Mr. Busck to hold the money for him. Mr. Busck agreed to hold the money overnight. The following day, Mr. Tang returned to Mr. Busck's residence, retrieved the money, and went to the Heaven Dragon Restaurant. The defendant then gave the money to a restaurant employee identified as Chaur Tang, and instructed Chaur Tang to take the money and conceal it in another safe deposit box at the Wells Fargo Bank in Northglenn, Colorado. Chaur Tang did as instructed but agents were able to recover the money from the box and seize it.

30. All the above incidents occurred within the State and District of Colorado.

#### **V. SENTENCING COMPUTATION**

31. The parties understand that the Court may impose any sentence, up to the statutory maximum, regardless of any guideline range computed, and that the Court is not bound by any position of the parties. The Court is free, pursuant to §§6A1.3 and 6B1.4, to reach its own findings of facts and sentencing factors considering the parties' stipulations, the pre-sentence investigation, and any other relevant information. (§6B1.4 Comm.;§1B1.4).

32. The advisory guidelines computation is as follows:
- A. Pursuant to Section 2S1.1(a)(2) of the United States Sentencing Guidelines, the base offense level is 8 plus the number of offense levels from Section 2B1.1 corresponding to the value of the laundered funds. The amount of laundered funds attributable to the defendant in this case is more than \$400,000.00 but less than \$1,000,000.00. Therefore, 14 levels are added bringing the base offense level calculation to 22.
  - B. Under Section 2S1.1(b)(1)(i), 6 levels are added because the defendant knew or believed that the laundered funds were the proceeds of an offense involving the manufacture, importation or distribution of a controlled substance. The base offense level, therefore, becomes 28.
  - C. Under Section 2S1.1(b)(2), 2 levels are added because the defendant will sustain a conviction under 18 U.S.C. §1956. The resulting base offense level is 30.
  - D. The government stipulates that Mr. Tang was not in the business of laundering funds (Section 2S1.1(b)(2)(C)). The government further stipulates that Mr. Tang's offense did not involve sophisticated laundering (Section 2S1.1(b)).
  - E. There should be no reduction or enhancement for role in the offense or obstruction of justice.
  - F. The defendant should receive a three level decrease for acceptance of responsibility. The resulting base offense level is 27.
  - G. The parties understand that the stipulation regarding criminal history of the defendant is tentative, and that the defendant is in a better position to know the relevant facts than is the government. The criminal history category is more completely and accurately determined by the Probation Department, and additional facts regarding the criminal history can greatly affect the final guideline range. Nevertheless, the parties believe that the defendant is in Criminal History Category I.
  - H. The career offender/career livelihood adjustments do not apply.
  - I. Based on an offense level 27 and a Criminal History Category I, the resulting guideline range is 70 to 87 months. As set forth above, the

parties jointly recommend that the Court impose a non-guideline statutory sentence of not less than 11 months and not more than 30 months. Further, that any sentence imposed may be satisfied by any one of the following: (1) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment; (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention provided that at least one month is satisfied by imprisonment; or (3) a sentence of imprisonment.

J. The fine range under the Sentencing Guidelines is \$12,500 to \$500,000 or twice the value of the property involved in the transaction.

K. The criminal forfeiture amount agreed to herein is \$952,600.75.

#### **VI. REASONS WHY THE PLEA AGREEMENT IS APPROPRIATE**

33. The plea encompasses all readily provable relevant offense conduct as of the date of the offer represented by the proposed plea agreement, and adequately reflects the serious nature of the criminal activity engaged in by the defendant.

34. As stated above, the parties will jointly be requesting that the Court impose a non-guideline statutory sentence outside of the applicable sentencing guideline range. The reasons for this request, which will be explained in detail at the time of sentencing, are summarized below.

35. Factors to be considered pursuant to 18 U.S.C. 3553(a) include, but are not limited to, the following:

36. A. Disparity in sentencing. Mr. Tang's conduct is minimal relative to other defendants in the investigation who have received sentences ranging from probation to 30 months.

B. From the time of his initial contact with the government, the defendant has accepted responsibility and has provided substantial information about his

role and the role of others in the offense.

C. The defendant has no prior criminal history and presents no risk of recidivism.

D. The defendant has maintained an excellent employment history and incarceration would have a significant effect on his business, including the potential loss of many jobs and the resulting impact on employees and their families.

E. The defendant has performed exceptional good deeds for many years and participates in charitable and community activities.

F. The defendant's offense conduct was not sophisticated.

G. The defendant's cultural heritage, social factors, and mental health issues.

H. Defendant's agreement not to contest forfeiture action, his wife's agreement to civilly forfeit assets, and defendant's agreement not to file a claim against those assets being forfeited by his wife.

36. This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings or assurances, express or implied. In entering this agreement, neither the government nor the defendant have relied, or are relying, on any terms, promises, conditions or assurances not expressly stated in this agreement.

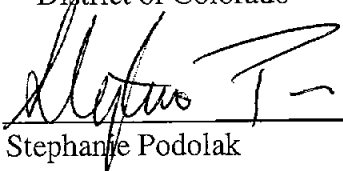
Dated: Denver, Colorado


11/20 2009

Respectfully submitted,

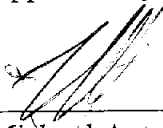
DAVID M. GAOUILTE  
United States Attorney  
District of Colorado

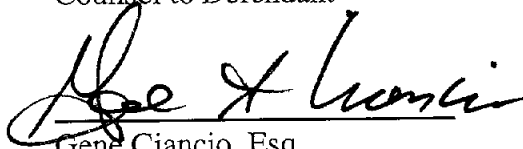
Agreed and consented to:

By:   
Stephanie Podolak  
Assistant U.S. Attorney

  
DAN KHAU TANG  
Defendant

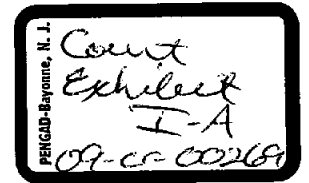
Approved by:

  
Michael Axt, Esq.  
Counsel to Defendant

  
Gene Ciancio, Esq.  
Counsel to Defendant

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科羅拉多州地區  
美國聯邦地區法庭



刑事案件代號：09-cr-00269-WYD

美利堅合眾國，

原告，

指控：

1. DAN KHAU TANG,

被告，

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第 11(c) (1) (B) 條法規，認罪聲明協議

和事實規定

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依據聯邦刑事程序法規第 11(c) (1) (B) 條以及科羅拉多區域法庭之地方法規第 11.1 條, 美利堅合眾國, 由科羅拉多州地區執行律師, 戴維. M. 高埃特 (David M. Gaouette) 代表, 并通過美國政府助理律師斯蒂芬妮. 珀多拉克 (Stephanie Podolak) 与 DAN KHAU TANG 本人及其委任律師麥可爾. 愛可斯特 (Michael Axt) 律師和金. 希盜琪 (Gene Cianci) 律師, 共同提交以下認罪聲明協議以及事實規定。

各方的共同意願是, 通過本標題所示案件的處理, 解決被告与政府之間所有

懸而未決的聯邦刑事問題，包括任何及所有稅務有關的問題等等。



### I. 認罪協議

1. 被告同意對標題 09-cr-00269 WYD 中所列舉資料中的第一項罪名供認有罪，該項罪名指控，于二零零七年一月一日當日或其前後和二零零八年二月十六日或其前後，及在大約以上兩個日期之間的時間內，被告 Dan Khau Tang 夥同他人在科羅拉多州及其地區內，蓄意并故意地密謀進行和試圖進行了一系列的涉及州間貿易的財務交易。該財務交易涉及具體的非法活動所得，即，大麻的種植和分銷。被告明知上述的一系列財務交易從其謀劃來講，其目的是以其整體或部分隱瞞和掩飾該具體非法行為所得的本質，位置，來源，所有權及掌控等等。被告同時明知該財務交易涉及的財產屬於該具體非法行為所得。所有行為觸犯了美國聯邦法典 18 U.S.C. 1956(a)(1)(B)(I) 和 1956(h) 的相關規定。

2. 被告同時同意承認本資料中第二項罪名對其違法活動的沒收指控，并同意接受對其下列財產中的任何及所有利益的沒收，所涉及財產均屬於其供認有罪的非法行為所得，并涉及該非法活動：

- a. 17,797.00 美元的美國貨幣
- b. \$320,120.00 美元的美國貨幣
- c. \$170,000.00 美元的美國貨幣
- d. \$400,100.00 美元的美國貨幣
- e. 44,583.75 美元由支票兌換的現金

3. 作為該協議的一部分，政府方將免除對 Tang 先生之妻 Ying Li 的起訴。她同意以和平的方式交出本資料中第二項罪名列舉的以下各項財產中的所有權利，財產證及所享利益等等：

- a. \$529,550.00 美元的美國貨幣
- b. 從西部銀行(Bank of the West)沒收的 1,156.26 美元  
賬戶號碼為：915072557
- c. 從富國銀行(Wells Fargo)沒收的 160,162.85 美元  
賬戶號碼為：1342733224
- d. 從西部銀行(Bank of the West)沒收的 17,356.51 美元  
賬戶號碼為：915059729
- e. 從富國銀行(Wells Fargo)沒收的 40,000.00 美元  
賬戶號碼為：3393125673
- f. 從富國銀行(Wells Fargo)沒收的 47,534.00 美元  
賬戶號碼為：5737570217

g. 從富國銀行 (Wells Fargo) 沒收的\$59,526.66 美元

賬戶號碼為: 5737570688

h. 從西部銀行 (Bank of the West) 沒收的\$49,671.01 美元

賬戶號碼為: 915001374

i. 從富國銀行 (Wells Fargo) 沒收的 1,472.26 美元

賬戶號碼為: 6299055696

此外，對於其妻子 Ying Li 同意以和平的方式交出的任何財產，Tang 先生

同意將不會提出任何權利要求。

4. 作為以上協議的交換條件，被告同意在所有程序中繼續為政府方提供包括行政和司法方面的協助，所涉及的程序包括，政府的沒收行為將要涉及的當事人在各種不法行為所得的財產中享受的一切不同性質和不同形式的所有權，財產證及所享利益等等（不論該財產是本人經由不法活動親自積累，還是在其知情情況下由他人經由不法活動積累），包括房地產和個人財產，現鈔及其它貨幣工具等，不論該財產位于何處。此處所述及的協助將會包括要求被告同意簽署相關命令，以禁止當事人對涉及沒收的財產進行任何形式的轉移和妨礙等活動。除此之外，被告進一步同意將盡其所能辨識所有受沒收命令限值的財產，并同時同意按照相關要求向政府方提供該財產有關的必要及合適的文件，以協助辦理該財產向美國政府的轉移，包括同意接受沒收命令，放棄權利要求的相關契約，以及在提交有效和可出售的相關財產的財產證時所需的任何及所有的其它相關文件。各方另外還商定，被告的刑事沒收責任負債應為 952,600.75 美元，也就是以上第二段所列舉的總美元數數額。

5. 被告另外同意，如果任何家庭成員，同事或熟人試圖對所涉及的財產提出任何權利要求，被告將會盡其所能為政府提供一切必要的有關這些權利要求的資料。

6. 對於行政沒收的啓動過程，及/或對於涉及該財產的司法或行政沒收程序的其它另行通知，被告同時同意免除任何適用的時間限值，被告并同意放棄對沒收命令的任何上訴權。

7. 作為本聲明的交換條件，政府方將同意免除對於被告的相關行爲提起進一步的聯邦刑事和民事訴訟，涉及行爲包括被告已經披露，并在簽署本認罪聲明協議書時政府已知的行爲。這裏也一并包括任何刑事稅務問題或國稅偏提及的任何民事或行政稅務問題。

8. 依據美國量刑原則第 3E1.1(a) 和 (b) 節，政府方同意提出動議，建議被告應因其承擔責任的緣故，得到三個級別的減刑。政府方還同意在確定適用的量刑原則時，本

被告在提供合作的過程中所提供的有關他人的非法活動以及在本協議中提供的任何自我認罪的相關信息，將不會用來對其進行打擊。

9. 政府提議應對其施行超出相關適用的量刑原則範圍之外的非原則性法定判刑。

10. 政府方同時同意將不會反對被告申請動議，要求對其判刑進行超出本為適用的量刑範圍之外的下行調整，變更，及/或非原則性的法定判刑。

11. 政府方同時還同意進一步共同建議法庭判處不少于一個月，但不多于三十個月的非原則性的法定刑期。各方同時進一步同意，所做出的任何判決均可以通過下列各項的任何一項得到滿足：（1）包括一個條件或多個條件組合的緩刑判決，以間隔性監禁、社區看管、或家庭拘留代替囚禁；（2）包括監管釋放在內的監禁徒刑，以其相關條件代替社區看管或家庭禁閉，但必須滿足至少一個月的監禁時間；或（3）監禁判決。各方均認識到，被告和政府方向法庭提出的變更，偏離或非原則性的法定判決等要求，對於法庭

僅具有建議性意義，施行判決法庭將完全有權自主掌握是否最終准許這種有關變更，偏離或非原則性的法定判決的請求。

12. 被告同時承認，一旦法庭決定不接受各方提出的變更，下行性偏離或非原則性的法定判決請求，或者法庭一旦決定駁回各方提出的量刑建議，被告將無權撤回其認罪聲明。

## II. 罪行的構成要素

13. 對於密謀洗錢及貨幣工具的起訴，其要素應包括以下各項：

a. 在本資料所指控的時間範圍內，被告同意與至少一位他人，實施了洗錢及貨幣工具的犯罪行為，並且：

b. 被告是在知情的情況下，有意識地同意參與以上行為；

c. 洗錢所包含的基本要素包括：

(1) 當事人進行了或企圖進行某一涉及州間商務的財務交易，且明知該交易牽涉到的財產繫具體非法行為的某種形式所得；



- (2) 該交易所牽涉的財產確繫某一具體非法行為所得；并且
- (3) 進行交易的目的是將其全部或部分用來隱瞞和掩飾具體的違法行為所得的本質，位置，來源及所有權等等。

### III. 法定罰則

14. 對於第一項罪名（即觸犯美國聯邦法典 18 章第 1956 (h) 節）定罪后，法定的最高處罰上限為：不多于二十年的監禁刑期，不超過 500,000 美元，或洗錢交易所牽涉資金數額兩倍的罰金。依據美國聯邦法典 18 U.S.C.，第 3559 (a) (3) 節，及 3583 (b) (2) 節，應處不超過三年的監管釋放。此案不涉及賠償金。

15. 罪名成立后，有可能會導致某些公民權力的喪失，包括，但并不局限于以下所列之公民權力：擁有槍械權，投票選舉權，擔任選舉產生之公職權及作為陪審團成員的權力。

16. 違反緩刑及管制性釋放所訂立之條件的行為有可能導致其它的監禁刑期。

### IV. 事實依據的規定

#### 和有關判決的事實

17. 各方均同意在構成判決罪行的事實依據的主要元素方面不存在任何分歧。

18. 有關事實列舉如下，以提供認罪所依賴的事實依據，并同時提供各方均認為与

本案有關的事實。關於各方在量刑相關事實方面尚存的爭議，事實陳述文字中將會明確指出在認罪聲明簽署之時，各方公認哪些事實尚存在爭議。

19. 本事實陳述并不能阻止任何一方為判刑目的而提出及申辯本文尚未收入，但與整個宣判程序有關的事實及要素。

20. 二零零七年九月期間，美國緝毒署（簡稱“DEA”）和大都會北部毒品行動小組（簡稱“NMDTF”）在丹佛大都會地區展開了一項針對一個大型的亞洲人經營的室內大麻種植和銷售組織的調查。該大麻種植和分銷活動由 Tang 先生的直系親屬成員領導，包括但不局限于以下成員：被告兄弟 Ming Yin Deng 和 Fayin Deng，以及他們的妻子 Wo Mei Mo 和 Kelly Choung。種植活動牽涉的其它成員還包括 Eric Sen 和 Kim Dang，兩人均繫 Tang 先生所經營的天龍餐館（Heaven Dragon Restaurant）的雇員。

21. 儘管這次調查行動最終導致二十五個室內大麻種植場所被搗毀，兩萬四千棵大麻植物和三百萬美元的貨幣被收繳，但 Tang 先生提供的直接經濟幫助則僅限于提供首付

款項購置住宅，其中種植大麻植物總數為四千棵。除此之外，還有總額為 952,600.75 美元的洗錢犯罪資金也歸因于 Tang 先生。

22. 另外本調查行動又發現以下事實，而且有關該事實被告也提供了相關的信息：即 Tang 先生曾利用其餐館虛假雇用該組織成員，並為其支付薪金，報稅等，為該組織成員提供所謂的合法收入來源，以此方式提供了間接的經濟幫助。該組織成員有必要顯示合法收入來源，以便獲得銀行貸款來購置用于大麻種植的房產。政府方規定，Tang 先生所提供的這些間接資金計算起來比較困難，而且也不應包括在刑事沒收計算當中，原因是，相關信息由 Tang 先生提供，因此相關內容由行刑原則第 1B1.8 節闡述，并被其排除在外。

23. 該調查活動進一步顯示，該組織成員在其毒品種植活動中集聚著大量的現鈔，因此需要隱瞞和掩飾毒品所得的性質，地點，來源，所有權及其掌控情況等等。為了幫助

其家人藏匿資金，Tang 先生開始捲入一場与 Ming Yin Deng、Fayin Deng、Wo Mei Mo、Kelly Choung 等等其他成員協作的密謀洗錢活動。

24. 此處同時規定，Tang 先生多年來一直成功地經營著一家餐飲公司。該大麻種植組織的成員相信，由 Tang 先生這樣有名望的人士來掌控其非法活動的部分所得，他們的非法活動將很難被察覺。

25. 具體來講，在二零零七年一月一日和二零零八年二月十六日之間的時間段里，Tang 先生曾先後通過四五個場合，從其兄弟 Fayin Deng 及弟媳/嫂嫂 Kelly Choung 處收到大約 50,000 到 \$60,000 美元不等數目的資金。收到款項總計大約 250,000 美元左右。大約于同一個時間段中，Tang 先生并曾從其另一兄弟 Fu Yin Deng 處收到 70,000 美元的款項，此人也同樣參與了該大麻種植密謀活動。該總數為 320,120 美元的款項系種植，製造及分銷大麻物品所得。該總數為 320,120 美元的款項藏匿于 Tang 先生家中。當收到并藏匿該款項時，Tang 先生明白或有原因知道該款項系種植，製造及分銷大麻物

品所得。Tang 先生，以及 Fayin Deng 和 Kelly Choung 等準備使用該毒品所得，購置位于科羅拉多州，朗蒙（Longmont）市的一個臨街條形商業區。

26. 二零零八年二月十六日，Tang 先生被告知緝毒署及當地警察正在搜查該大麻種植和分銷機構成員使用的住宅，并且正在收繳毒品和毒品所得。爲了隱瞞和掩飾該毒品所得的性質，地點，來源，所有權及掌控等等，Tang 先生將該總數為 320, 120 美元的款項收集后，分裝在幾個垃圾袋中，而後放入卡車的底盤里，企圖將該毒品所得帶入天龍餐館（Heaven Dragon Restaurant）。Tang 先生後來被執法人員攔下，這筆資金也在隨後被收繳。

27. 證據也另外顯示，二零零八年二月二十日，Tang 先生及其妻子 Ying Li，和另外一為身份為維多利亞·霍華德（Victoria Howard）的人，曾一道前往位于科羅拉多州，桑頓（Thornton）市的 VectraBank，并從此處的安全保管箱中取出總數 400, 100.00 美元的美國貨幣。霍華德女士是受命于弗雷德雷克·舍費爾律師而被雇，該律師負責代理 Tang 先生有關餐館方面的事務。在 Tang 先生收到自認爲是一封勒索信件后，舍費爾先生

建議 Tang 先生應雇用霍華德女士為其提供每天二十四小時的保安服務。後來發現該信件并非是要索要金錢，而是一份發給 Tang 先生的通知，告知他本人及其他人員正在接受相關執法機構的調查。

28. 該款項從銀行提出后，Tang 先生將該總數 400,100.00 美元的資金留在舍費爾先生的辦公室中。舍費爾先生和霍華德女士的服務費用均從該款項中扣除。政府方將顯示，該筆大約美元的款項是由 Tang 先生的兄弟 Ming Yin Deng 及其弟媳/嫂嫂 Wo Mei Mo 轉交給他，而且該筆款項是各個不同的大麻種植場所所得。當 Tang 先生從其家庭成員處接受這筆款項，并將其藏匿在安全保管箱中之時，當事人明白該筆款項是大麻種植所得，并且企圖隱瞞和掩飾該筆所得的實質。

29. 二零零八年二月二十日，被告攜帶本筆資金前往一位科羅拉多州，桑頓市前市長，名曰諾埃爾·布斯克 (Noel Busck ) 之人的家中，并請求布斯克先生為其代管這筆資金。布斯克先生答應以一夜為限替其代管資金。第二天，Tang 先生返回布斯克先生府上取回資金后，携其前往天龍餐館 (Heaven Dragon Restaurant)。被告而後將這筆資金



交給餐館的一位名曰 Chaur Tang 的雇員，并授意 Chaur Tang 携帶這筆資金，將其藏匿在位于科羅拉多州，北格蘭市（Northgless）的富國銀行（Wells Fargo Bank）中的另一個安全保管箱中。Chaur Tang 按其授意行動，但調查人員最終成功地從該保管箱中拿回這筆資金，并將其沒收。

30. 上述所有事件均發生在科羅拉多州及其地區內。

#### V. 刑罰計算

31. 各方均明白不論所計算出的原則性範圍如何，法庭有權做出高達法律許可的最高程度的判決，并且，法庭也不受各方立場的限制。依據第 6A1.3 以及第 6B1.4 條法規，法庭在考慮各方之規定，判決前之調查及所有其它的資料之后，可以完全自由地做出自己對於事實和判刑相關因素的裁決(6B1.4 Comm. ; 1B1.4)。

32. 建議性原則計算方式如下：

A. 依據美國量刑原則第 2S1.1(a)(2) 節，其基本犯罪等級為 8，外加第 2B1.1 節中与洗錢數額相對應的犯罪級別數字。本案中歸咎于本被告的被洗資金數額為 400,000.00 美元以上，但在 1,000,000.00 美元以下。因此，需增加 14 個級別，所得基本

犯罪級別計算為 22 級。

B. 依據第 2S1.1(b)(1)(i) 節，應增加 6 個級別，原因是被告明知或相信被洗資金涉及製造，進口或分銷被控制物品的犯罪行為所得。因此，其基本犯罪級別升為 28 級。

C. 根據美國聯邦法典第 18 U.S.C. § 1956 條，被告應接受另一項定罪，因此按照第 2S1.1(B)(2) 節規定犯罪等級應另提高兩級。因此得出的基本犯罪級別為 30 級。

D. 政府方規定 Tang 先生并不是專門經營洗錢業務（第 2S1.1(b)(2)(C) 節）。政府方進一步規定 Tang 先生的犯罪行為不涉及複雜洗錢機制（第 2S1.1(b) 節）。

E. 在犯罪行為角色和妨礙司法方面，應沒有任何的減刑和加刑調整。

F. 被告因其承擔責任應該有 3 級的減刑。因此得出的基本犯罪級別為 27 級。

G. 各方共同認識到，有關被告犯罪記錄方面的規定屬暫行性；與政府方相比，被告本人應該更清楚相關的事實情況。其犯罪記錄的歸類將由緩刑部門做出更加完整準確的裁決，而且有關犯罪記錄的其他事實將對於最終的原則範圍產生重大的影響。儘管如此，各方仍舊相信本被告應該屬於犯罪記錄 I 類。

H. 職業性罪犯/犯罪性生計有關的調整不適用於此。

I. 根據犯罪級別 27 級和犯罪歷史一類計算，所得的原則範圍為七十到八十七個月。如上文所述，各方共同建議，法庭應對其判處不少于一個月，但不多于三十個月的非原則性的法定刑期。此外，所施行的任何判決均可以通過下列之中任何一項滿足：

(1) 包括一個條件或多個條件組合的緩刑判決，以間隔性監禁、社區看管、或家庭拘留代替囚禁；(2) 包括監管釋放在內的監禁徒刑，代替社區看管或家庭禁閉，但必須滿足至少一個月的監禁時間；或(3) 監禁徒刑。

J. 依據該量刑準則應處的罰金範圍應該為 12,500 到 \$500,000 美元或相當于涉及本交易財產價值的兩倍。

K. 此處各方達成共識的刑事沒收數額為 952,600.75 美元。

#### VI. 爲什麼所提議之認罪協議是合適的

33. 該認罪聲明涵括了截至其提出之日之前，也就是認罪協議所載之日之前所發生的全部易于證明的犯罪行爲，并同時也充分地反映了被告所從事的犯罪行爲的嚴重程度。

34. 如上所述，各方將共同要求法院判處超出相關適用的原則範圍以外的非準則性法定判刑。本要求的依據將在判刑之時進行詳盡的論述，此處僅總結如下。

35. 依據美國聯邦法典 18 U.S.C. 3553(a) ，應當考慮的要素包括但并不局限于以下各項內容：

- A. 判刑差异。与本調查活動中其他被判刑期從緩刑到 30 個月不等的其他被告相比，Tang 先生的行爲屬於情節較輕者。
- B. 自從其最初与政府方接觸開始，被告願意承擔責任，并且提供了大量該犯罪行爲中与自己 and 他人扮演角色有關的信息。
- C. 被告并無前科，因此沒有累犯方面的危險。
- D. 被告曾經保持有優秀的就業記錄，因此監禁對其業務將會產生相當嚴重的影響，包括有可能導致大量工作機會的喪失以及由此帶來的對其雇員和家人的影響。
- E. 多年來被告曾經做過非常好的善事，并參與了各類慈善和社區活動。
- F. 被告的犯罪行爲應不屬於複雜機制。

G. 被告的文化傳統，社會因素和心理健康問題。

H. 被告同意對於沒收行動免除爭辯，其妻子同意以和平的方式交出財產，而且被告同意對於其妻子準備交出的財產免于提出任何權利要求。

36. 本文件表達了各方所達成的全部協議。除此之外并無任何其它的承諾，協議（或“副協議”），條款，條件，理解及保證，不論是明確的還是暗示的。在簽署本協議之時，不論是政府方還是被告本人都沒有依賴或正在依賴任何本協議所沒有明確表述的任何條款，承諾，條件及保證等。

日期：科羅拉多州，丹佛市

2009 年

敬呈

戴維. M. 高埃特 (David M. Gaouette)  
美國政府律師  
科羅拉多地區

經以下各方商定同意：

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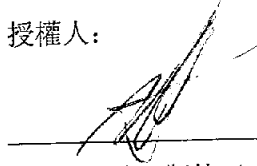
斯蒂芬妮. 珀多拉克 (Stephanie Podolak)  
美國政府助理律師



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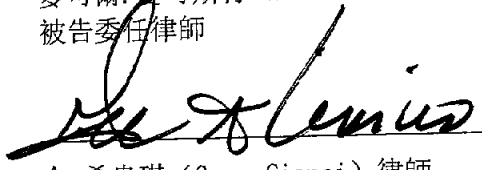
DAN KHAU TANG,  
被告

授權人:



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麥可爾. 愛可斯特 (Michael Axt) 律師  
被告委任律師



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金. 希盜琪 (Gene Cianci) 律師  
被告委任律師