



United States Department of Justice

United States Attorney
Southern District of West Virginia

FILE COPY

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Charleston, WV 25326
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July 24, 2018

James M. Cagle, Esq.,
1018 Kanawha Blvd., East
Suite 1200
Charleston, WV 25301

Re: *United States v. Menis E. Ketchum II*

Dear Mr. Cagle:

This will confirm our conversations with regard to your client, Menis E. Ketchum II (hereinafter "Mr. Ketchum"). As a result of these conversations, it is agreed by and between the United States and Mr. Ketchum as follows:

1. **CHARGING AGREEMENT.** Mr. Ketchum agrees to waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by Indictment and will consent to the filing of a one-count Information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."
2. **RESOLUTION OF CHARGES.** Mr. Ketchum will plead guilty to the one-count Information charging him with wire fraud in violation of 18 U.S.C. § 1343 relating to his personal use of a State of West Virginia vehicle and fuel credit card in August 2014.
3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Ketchum will be exposed by virtue of this guilty plea is as follows:
 - (a) Imprisonment for a period of 20 years;
 - (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;


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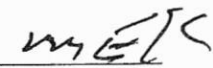
- (c) A term of supervised release of not more than three years;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) An order of restitution pursuant to 18 U.S.C. §§ 3663A and 3664, as may otherwise be set forth in this plea agreement.

4. **WAIVER OF STATUTE OF LIMITATIONS AND PRETRIAL DELAY.** Mr. Ketchum knowingly and voluntarily agrees that in the event (a) this agreement is voided or not accepted by the District Court, or (b) he withdraws from the agreement, or (c) his conviction is vacated for any reason, then any prosecution of an offense or offenses that was or were completed as of July 10, 2013, and that could have been brought as of July 24, 2018, may be commenced against him notwithstanding the potential applicability of the statute of limitations under 18 U.S.C. § 3282. Any such prosecution, however, must be commenced not later than three months after the occurrence of one of the conditions in (a), (b) or (c) above. Mr. Ketchum knowingly and voluntarily waives all defenses based on the applicable statutes of limitations, and pre-indictment delay under the Federal Rules of Criminal Procedure or the United States Constitution, with respect to any such potential future prosecution.

5. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Ketchum will tender a check or money order to the Clerk of the United States District Court for \$100, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Ketchum will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Ketchum fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Ketchum.

6. **RESTITUTION.** Notwithstanding the offense of conviction, Mr. Ketchum agrees that he owes restitution in the amount of not less than \$400 and not more than \$700 to the State of West Virginia. Mr. Ketchum agrees to pay such restitution, with interest as allowed by law, to the fullest extent financially feasible. In aid of restitution, Mr. Ketchum further agrees as follows:


- (a) Mr. Ketchum agrees to fully assist the United States in identifying and locating any assets to be applied toward restitution and to give signed, sworn statements and testimony concerning assets upon request of the United States.


Defendant's
Initials

- (b) Mr. Ketchum will fully complete and execute, under oath, a Financial Statement and a Release of Financial Information on forms supplied by the United States and will return these completed forms to counsel for the United States within seven calendar days from the date of the signing of this plea agreement.
- (c) Mr. Ketchum agrees not to dispose of, transfer or otherwise encumber any real or personal property which he currently owns or in which he holds an interest.
- (d) Mr. Ketchum agrees to fully cooperate with the United States in the liquidation of assets to be applied towards restitution, to execute any and all documents necessary to transfer title of any assets available to satisfy restitution, to release any and all right, title and interest he may have in and to such property, and waives his right to exemptions under the Federal Debt Collection Procedures Act upon levy against and the sale of any such property.
- (e) Mr. Ketchum agrees not to appeal any order of the District Court imposing restitution unless the amount of restitution imposed exceeds the amount set forth in this plea agreement. However, nothing in this provision is intended to preclude the Court from ordering Mr. Ketchum to pay a greater or lesser sum of restitution in accordance with law.

7. **PAYMENT OF MONETARY PENALTIES.** Mr. Ketchum authorizes the Financial Litigation Unit in the United States Attorney's Office to obtain a credit report from any major credit reporting agency prior to sentencing in order to assess his financial condition for sentencing purposes. Mr. Ketchum agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Ketchum further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

Mr. Ketchum authorizes the United States, through the Financial Litigation Unit, to submit any unpaid criminal monetary penalty to the United States Treasury for offset in accordance with the Treasury Offset Program, regardless of the defendant's payment status or history at that time.


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In addition to any payment ordered by the Court, Mr. Ketchum shall pay all monies received from any source other than earned income, including but not limited to: lottery winnings, gambling proceeds, judgments, inheritances, and tax refunds toward the Court ordered restitution or fine.

Mr. Ketchum agrees that if he retains counsel or has appointed counsel in response to the United States' efforts to collect any monetary penalty, he shall immediately notify the United States Attorney's Office, Attention: Financial Litigation Unit, P.O. Box 1713, Charleston, West Virginia 25326-1713, in writing and shall instruct his attorney to notify FLU immediately of his representation.

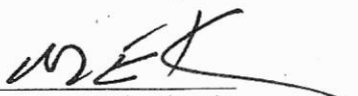
8. **COOPERATION.** Mr. Ketchum will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Ketchum may have counsel present except when appearing before a grand jury.

9. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Ketchum, and except as expressly provided for in paragraph thirteen below, nothing contained in any statement or testimony provided by him pursuant to this agreement, or any evidence developed therefrom, will be used against him, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

10. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Ketchum for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Ketchum for perjury or false statement if such a situation should occur pursuant to this agreement.

11. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Ketchum stipulate and agree that the facts comprising the offense of conviction include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit B."

Mr. Ketchum agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by him, and he is subsequently tried for his conduct alleged in the information and other relevant conduct, as more specifically described in the Stipulation of Facts, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Mr. Ketchum or of any of his witnesses, or in rebuttal of any


Defendant's
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testimony introduced by him or on his behalf. Mr. Ketchum knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Ketchum understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

12. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Ketchum knowingly and voluntarily waives his right to seek appellate review of his conviction and of any sentence of imprisonment, fine, or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742. Mr. Ketchum also knowingly and voluntarily waives any right to seek appellate review of any claim or argument that (1) the statute of conviction, 18 U.S.C. § 1343, is unconstitutional, and (2) Mr. Ketchum's conduct set forth in the Stipulation of Facts (Plea Agreement Exhibit B) does not fall within the scope of 18 U.S.C. § 1343, except Mr. Ketchum may appeal the following:

- (a) a sentence that exceeds the maximum penalty prescribed by statute; and
- (b) a decision by the District Court, pursuant to the Sentencing Guidelines or 18 U.S.C. § 3553(a), to make an "upward departure" or "upward variance" from the total offense level calculated by the District Court or the guideline range corresponding to that level.

The United States also waives its right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, except the United States may appeal the following:

- (a) a sentence that is below the minimum penalty, if any, prescribed by statute; and
- (b) a decision by the District Court, pursuant to the Sentencing Guidelines or 18 U.S.C. § 3553(a), to make a "downward departure" or "downward variance" from the total offense level calculated by the District Court or the guideline range corresponding to that level.


Defendant's
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Mr. Ketchum also knowingly and voluntarily waives the right to challenge his guilty plea and conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

13. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Ketchum knowingly and voluntarily 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 any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

14. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Ketchum;
- (f) Advise the Court concerning the nature and extent of Mr. Ketchum's cooperation;
and
- (g) Address the Court regarding the issue of Mr. Ketchum's acceptance of responsibility.

15. **VOIDING OF AGREEMENT.** If either the United States or Mr. Ketchum violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

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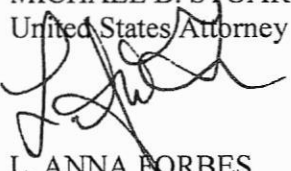
Defendant's
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16. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Ketchum in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Ketchum in any Court other than the United States District Court for the Southern District of West Virginia.


Acknowledged and agreed to on behalf of the United States:

MICHAEL B. STUART
United States Attorney

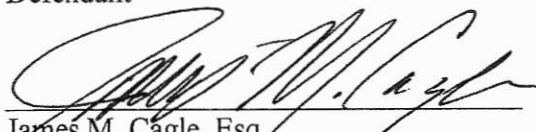
By:


L. ANNA FORBES
Assistant United States Attorney

I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this seven-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.


Menis E. Ketchum II
Defendant

7/30/18
Date Signed


James M. Cagle, Esq.
Counsel for Defendant

7/30/18
Date Signed

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. _____
18 U.S.C. § 1343

MENIS E. KETCHUM II

INFORMATION

The United States Attorney Charges:

1. Defendant MENIS E. KETCHUM II was a Justice on the Supreme Court of Appeals of West Virginia (“Supreme Court”) from January 1, 2008, through late July 27, 2018. He served as the Supreme Court’s Chief Justice twice, in 2012 and 2016.

2. In January 2012, defendant MENIS E. KETCHUM II began using a State-owned vehicle, a 2007 Buick Lucerne, for the purposes of commuting back and forth from his Huntington, West Virginia residence to his chambers at the State Capitol in Charleston, West Virginia. His use of the Buick Lucerne was supposed to be limited to exclusively business-related purposes and not for personal travel. In addition to the use of the Buick Lucerne for commuting purposes, defendant MENIS E. KETCHUM II also charged to the State of West Virginia the fuel costs associated with

“Plea Agreement Exhibit A”

his commuting by using a State-issued fuel credit card, a credit card issued by Wright Express, Inc. ("WEX Bank").

3. Between in or about August 6, 2014, and August 9, 2014, defendant MENIS E. KETCHUM II traveled from his Huntington, West Virginia home to a private golf club in western Virginia, driving the State-owned Buick Lucerne and charging the fuel costs of this trip to the State-issued fuel credit card. The round-trip mileage for this travel was nearly 400 miles. Defendant MENIS E. KETCHUM II knew that he was not authorized to use the Buick Lucerne nor was he authorized to charge his fuel costs to the State of West Virginia because this travel was entirely for personal and recreational reasons.

4. The fraudulent conduct by defendant MENIS E. KETCHUM II consisted of a scheme to defraud the State of West Virginia in order to obtain money and property through false and fraudulent pretenses and representations, that is, through his unauthorized personal use of a State-owned Buick Lucerne and the State-fuel card during his travel to and from West Virginia and the western Virginia golf club in 2011 through 2014.

5. More particularly, on or about August 6, 2014, defendant MENIS E. KETCHUM II purchased fuel near his home in Huntington, West Virginia, for the Buick Lucerne using the State fuel credit card. Thereafter, he drove the Buick from Huntington, West Virginia to the western Virginia golf club, where he golfed for three days. On his return trip home, defendant KETCHUM again charged his fuel costs to the State fuel credit card at a gas station in Princeton, West Virginia. The total value of defendant KETCHUM'S use of the Buick Lucerne for this particular golf outing was \$220.80. Defendant KETCHUM drove the Buick Lucerne to the western Virginia golf club and charged his fuel costs to the State of West Virginia on at least seven other occasions.

"Plea Agreement Exhibit A"

6. On or about August 9, 2014, at or near, Princeton, Mercer County, West Virginia, within the Southern District of West Virginia and elsewhere, defendant MENIS E. KETCHUM II, having devised and intending to devise a scheme and artifice to defraud and for obtaining money by means of materially false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, and pictures for the purpose of executing the scheme, that is, defendant KETCHUM used a State of West Virginia fuel credit card to purchase fuel at a gasoline station in Princeton, West Virginia for the Buick Lucerne while returning home from his golf outing in western Virginia and thereby caused to be transmitted in interstate commerce a wire communication from an electronic credit card reader at a BP gas station located at 1000 Oakvale Road, Princeton, West Virginia to electronic databases in WEX BANK's offices in Aurora, Colorado.

In violation of Title 18, United States Code, Section 1343.

UNITED STATES OF AMERICA

MICHAEL B. STUART
United States Attorney

By:

L. ANNA FORBES
Assistant United States Attorney

"Plea Agreement Exhibit A"

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

UNITED STATES OF AMERICA

v.

CRIMINAL NO. _____

MENIS E. KETCHUM II

STIPULATION OF FACTS

The United States and MENIS E. KETCHUM II stipulate and agree that the facts comprising the offense of conviction charged in the Information filed in the Southern District of West Virginia include the following:¹

I, MENIS E. KETCHUM II, served as a Justice of the Supreme Court of Appeals of West Virginia ("Supreme Court" and "Court") from January 1, 2008, through July 27, 2018. I served as the Supreme Court's Chief Justice for the years 2012 and 2016.

In early January 2012, just days after becoming the Chief Justice, I obtained permission from my judicial colleagues to use one of the State vehicles, a 2007 Buick Lucerne, to commute to and from my office at the Supreme Court in the State Capitol Building in Charleston, West Virginia from my Huntington, West Virginia home, a round-trip distance of 104 miles.

¹ This Stipulation of Facts provides the factual basis for a guilty plea. It does not contain each and every fact known to the parties concerning Mr. Ketchum's involvement and the involvement of others in the charge set forth in the Information.

When I raised the issue about using a State vehicle for commuting purposes, one of the four Justices advised me that: (1) “it was a bad idea” and “an unwise policy”, or words to that effect; and (2) I should not do it.


I used the 2007 Buick Lucerne to commute to and from my home in Huntington to my Charleston office from early 2012 to mid-2016, that is, for approximately four and a half years. On numerous occasions I also used the 2007 Buick Lucerne and the State fuel credit card to purchase gasoline for personal travel to golf outings at a private golf club in western Virginia costing the State of West Virginia approximately \$220 per trip. I have already repaid the State of West Virginia a significant portion of these and other costs. I knew that substantial use of State property for purely personal reasons could violate provisions of the State’s ethical statutes and rules. Beginning in or about mid-2016, as a consequence of questions about the propriety of personal use of the State vehicles made by one of the Justices, I ceased my use of the State vehicle for commuting.

More particularly, and with respect to one of my golf outings to western Virginia, I admit that on or about August 6, 2014, I purchased fuel near my home in Huntington, West Virginia, for the Buick Lucerne using the State fuel credit card. Thereafter, I drove the Buick from Huntington, West Virginia to the western Virginia golf club, where I golfed for three days. On my return trip home, on August 9, 2014, I again charged my fuel costs using the State fuel credit card at a BP gas station in Princeton, West Virginia. The total value of my use of the Buick Lucerne for this particular golf outing was \$220.80. I agree and understand that when I purchased gasoline on August 9, 2014, at the Princeton, West Virginia BP gas station by swiping the State’s fuel credit card on an electronic credit card reader, I thereby caused a wire communication to be transmitted

in interstate commerce from that West Virginia location to electronic databases in WEX BANK's offices in Aurora, Colorado.

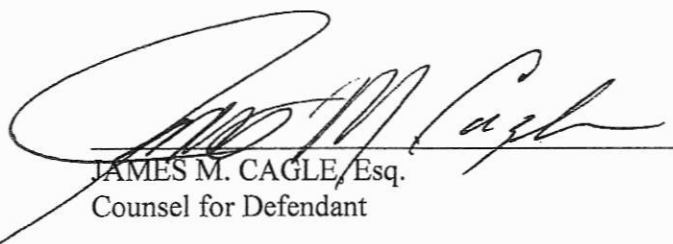
I drove the Buick Lucerne to the western Virginia golf club and charged my fuel costs to the State of West Virginia on at least seven other occasions.

Stipulated and agreed to:



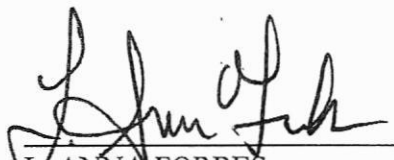
MENIS E. KETCHUM II
Defendant

7/30/18
Date



JAMES M. CAGLE, Esq.
Counsel for Defendant

7/30/18
Date



L. ANNA FORBES
Assistant United States Attorney

7/30/18
Date