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7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,
13 v.
14 GREGORY J. CHMIELEWSKI,
15 Defendant.

CASE NO. 2:11-CR-0084-GEB
PLEA AGREEMENT
DATE: JANUARY 15, 2016
TIME: 9:00 A.M.
COURT: Hon. Garland E. Burrell, Jr.

16
17 I. INTRODUCTION

18 A. Scope of Agreement.

19 The Indictment in this case charges the defendant with violations of 18 U.S.C. § 1341 – mail
20 fraud (“Counts One through Ten”) and 18 U.S.C. § 1957 – money laundering (“Counts Eleven through
21 Twenty-Four”). The Indictment also includes a criminal forfeiture allegation. This document contains
22 the complete plea agreement between the United States Attorney’s Office for the Eastern District of
23 California (the “government”) and the defendant regarding this case. This Plea Agreement is limited to
24 the United States Attorney’s Office for the Eastern District of California and cannot bind any other
25 federal, state, or local prosecuting, administrative, or regulatory authorities.

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

1 concerning the criminal activities of defendant, including activities which may not have been charged in
2 the Indictment. 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 Five and Count Seven of the Indictment. The
13 defendant agrees that he is in fact guilty of these charges and that the facts set forth in the Factual Basis
14 for Plea attached hereto as Exhibit A are accurate.

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

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

24 **B. Restitution.**

25 The defendant agrees that his conduct is governed by the Mandatory Restitution Act, pursuant to
26 18 U.S.C. § 3663A(c)(1)(A)(ii), and he agrees to pay full restitution, as order by the Court at sentencing,
27 to all victims affected by his offense, including, but not limited to, the victims covered in the factual
28 basis, victims covered in those counts of the Indictment to be dismissed as part of the Plea Agreement

1 pursuant to 18 U.S.C. § 3663A(a)(3), and other victims suffering loss as a result of the defendant's
2 conduct for the offenses charged in the Indictment. Defendant further agrees that he will not seek to
3 discharge any restitution obligation or any part of such obligation in any bankruptcy proceeding.

4 Payment of restitution shall be by cashier's or certified check made payable to the Clerk of the
5 Court.

6 **C. Fine.**

7 The defendant agrees to pay a criminal fine as ordered by the Court.

8 **D. Special Assessment.**

9 The defendant agrees to pay a special assessment of \$200 (comprised of \$100 per count of
10 conviction) at the time of sentencing by delivering a check or money order payable to the United States
11 District Court to the United States Probation Office immediately before the sentencing hearing. The
12 defendant understands that this Plea Agreement is voidable at the option of the government if he fails to
13 pay the assessment prior to that hearing. If the defendant is unable to pay the special assessment at the
14 time of sentencing, he agrees to earn the money to pay the assessment, if necessary by participating in
15 the Inmate Financial Responsibility Program.

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

17 If the defendant, cooperating or not, violates this Plea Agreement in any way, withdraws his
18 plea, or tries to withdraw his plea, this Plea Agreement is voidable at the option of the government. The
19 government will no longer be bound by its representations to the defendant concerning the limits on
20 criminal prosecution and sentencing as set forth herein. One way a cooperating defendant violates the
21 plea agreement is to commit any crime or provide any statement or testimony which proves to be
22 knowingly false, misleading, or materially incomplete. Any post-plea conduct by a defendant
23 constituting obstruction of justice will also be a violation of the agreement. The determination whether
24 the defendant has violated the Plea Agreement will be under a probable cause standard.

25 If the defendant violates the Plea Agreement, withdraws his plea, or tries to withdraw his plea,
26 the government shall have the right (1) to prosecute the defendant on any of the counts to which he
27 pleaded guilty; (2) to reinstate any counts that may be dismissed pursuant to this Plea Agreement; and
28 (3) to file any new charges that would otherwise be barred by this Plea Agreement. The defendant shall

1 thereafter be subject to prosecution for any federal criminal violation of which the government has
2 knowledge, including perjury, false statements, and obstruction of justice. The decision to pursue any or
3 all of these options is solely in the discretion of the United States Attorney's Office.

4 By signing this Plea Agreement, the defendant agrees to waive any objections, motions, and
5 defenses that the defendant might have to the government's decision. Any prosecutions that are not
6 time-barred by the applicable statute of limitations as of the date of this Plea Agreement may be
7 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
8 limitations between the signing of this Plea Agreement and the commencement of any such
9 prosecutions. The defendant agrees not to raise any objections based on the passage of time with respect
10 to such counts including, but not limited to, any statutes of limitation or any objections based on the
11 Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-
12 barred as of the date of this Plea Agreement.

13 In addition, (1) all statements made by the defendant to the government or other designated law
14 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
15 whether before or after this Plea Agreement, shall be admissible in evidence in any criminal, civil, or
16 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
17 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
18 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
19 the defendant before or after this Plea Agreement, or any leads derived therefrom, should be suppressed.
20 By signing this Plea Agreement, the defendant waives any and all rights in the foregoing respects.

21 **F. Asset Disclosure.**

22 The defendant agrees to make a full and complete disclosure of his assets and financial
23 condition, and will complete the United States Attorney's Office's "Authorization to Release
24 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
25 of plea. The defendant also agrees to have the Court enter an order to that effect. The defendant
26 understands that this Plea Agreement is voidable at the option of the government if the defendant fails to
27 complete truthfully and provide the described documentation to the United States Attorney's office
28 within the allotted time.

1 **III. THE GOVERNMENT’S OBLIGATIONS**

2 **A. Dismissals.**

3 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
4 remaining counts in the pending Indictment (Counts One through Four, Count Six, and Counts Eight
5 through Twenty-Four). The government also agrees not to reinstate any dismissed count except if this
6 agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation of Plea Agreement
7 by Defendant/Withdrawal of Plea, VI.B (Guidelines Calculations), and VII.B (Waiver of Appeal and
8 Collateral Attack) herein.

9 **B. Recommendations.**

10 1. Incarceration Range.

11 The government will recommend that the defendant be sentenced to the low end of the
12 applicable guideline range as determined by the Court at sentencing.

13 2. Acceptance of Responsibility.

14 The government will recommend a two-level reduction (if the offense level is less than
15 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if
16 the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
17 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of
18 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
19 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
20 preparation of the pre-sentence report or during the sentencing proceeding.

21 **C. Use of Information for Sentencing.**

22 The government is free to provide full and accurate information to the Court and Probation,
23 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate
24 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also
25 understands and agrees that nothing in this Plea Agreement bars the government from defending on
26 appeal or collateral review any sentence that the Court may impose.

27 Further, other than as set forth above, the government agrees that any incriminating information
28 provided by the defendant during his cooperation will not be used in determining the applicable

1 guideline range, pursuant to U.S.S.G. § 1B1.8., unless the information is used to respond to
2 representations made to the Court by the defendant, or on his behalf, that contradict information
3 provided by the defendant during his cooperation.

4 **IV. ELEMENTS OF THE OFFENSE**

5 At a trial, the government would have to prove beyond a reasonable doubt the following
6 elements of the offense(s) to which the defendant is pleading guilty:

7 As to Count Five and Count Seven, which charge Mail Fraud, in violation of 18 U.S.C. § 1341,
8 the elements are:

- 9 1. First, the defendant knowingly participated in, and devised a scheme or plan to defraud,
10 or a scheme or plan for obtaining money or property by means of false or fraudulent
11 pretenses, representations, or promises;
- 12 2. Second, the statements made or facts omitted as part of the scheme were material; that is,
13 they had a natural tendency to influence, or were capable of influencing, a person to part
14 with money or property;
- 15 3. Third, the defendant acted with the intent to defraud; that is, the intent to deceive or
16 cheat; and
- 17 4. Fourth, the defendant used, or caused to be used, the mails to carry out or attempt to carry
18 out an essential part of the scheme.

19 The defendant fully understands the nature and elements of the crimes charged in the Indictment
20 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
21 his attorney.

22 **V. MAXIMUM SENTENCE**

23 **A. Maximum Penalty**

24 The maximum sentence that the Court can imposed for each violation of 18 U.S.C. § 1341 –
25 Mail Fraud, is not more than 20 years’ incarceration, a fine of \$ 250,000, a five-year period of
26 supervised release, and a special assessment of \$100. By signing this Plea Agreement, the defendant
27 also agrees that the Court can order the payment of restitution for the full loss caused by the defendant’s
28 wrongful conduct. The defendant agrees that the restitution order is not restricted to the amounts alleged

1 in the specific counts to which the defendant is pleading guilty. The defendant further agrees, as noted
2 above, that he will not attempt to discharge in any present or future bankruptcy proceeding any
3 restitution imposed by the Court.

4 **B. Violations of Supervised Release.**

5 The defendant understands that if he violates a condition of supervised release at any time during
6 the term of supervised release, the Court may revoke the term of supervised release and require the
7 defendant to serve up to three years of additional imprisonment.

8 **VI. SENTENCING DETERMINATION**

9 **A. Statutory Authority.**

10 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
11 must take them into account when determining a final sentence. The defendant understands that the
12 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
13 Sentencing Guidelines and must take them into account when determining a final sentence. The
14 defendant further understands that the Court will consider whether there is a basis for departure from the
15 guideline sentencing range (either above or below the guideline sentencing range) because there exists
16 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
17 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
18 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
19 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

20 **B. Estimated Guideline Calculation.**

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

24 **1. Base Offense Level:** The base offense level for the charges to which the defendant is
25 pleading guilty is **7**. See U.S.S.G. § 2B1.1(a)(1).

26 **2. Specific Offense Characteristics:**

27 a. Sixteen levels are added (+**16**) because the loss in this case was more than \$1.5 million.

28 Id. at (b)(1)(I).

1 b. Two levels are added (+2) because the offense involved ten or more victims. Id. at
2 (b)(2)(A).

3 **3. Specific Offense Level:** The parties anticipate that the specific offense level will be **25**.

4 **4. Chapter Three Adjustments: Acceptance of Responsibility:** See Part III.B.2 (-3).

5 **5. Adjusted Offense Level:** Given the stipulations above, the parties anticipate that the
6 adjusted offense level will be **22**.

7 **6. Criminal History:** The parties agree and stipulate that the applicable criminal history
8 will be determined by the Court's probation officers. The parties anticipate, however, that the
9 defendant's criminal history category will be I. Accordingly, the parties estimate that the likely
10 Sentencing Guideline range will be approximately **41 to 51** months.

11 **7. Departures or Other Enhancements or Reductions:** The parties agree that they will
12 not seek or argue in support of any other specific offense characteristics, Chapter Three adjustments
13 (other than the decrease for "Acceptance of Responsibility"), or cross-references, except that the
14 government may move for a departure or adjustment based on defendant's post-plea obstruction of
15 justice (§3C1.1). Both parties agree not to move for, or argue in support of, any departures or
16 adjustments from the Sentencing Guidelines.

17 The defendant may recommend to the Court whatever sentence he believes is appropriate under
18 18 U.S.C. § 3553(a). The government may oppose any argument the defendant makes concerning the
19 sentence that the Court should impose, except that the government will not argue in favor of a sentence
20 above the low end of the applicable guideline range as determined by the Court at sentencing.

21 **VII. WAIVERS**

22 **A. Waiver of Constitutional Rights.**

23 The defendant understands that by pleading guilty he is waiving the following constitutional
24 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
25 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
26 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
27 compelled to incriminate himself.

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

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

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

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

15 Notwithstanding the agreement in paragraph III.A above that the government will move to
16 dismiss counts against the defendant, if the defendant ever attempts to vacate his plea(s), dismiss the
17 underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading
18 guilty, the government shall have the rights set forth in Section II.E herein.

19 **C. Waiver of Attorneys’ Fees and Costs.**

20 The defendant agrees to waive all rights under the “Hyde Amendment,” Section 617, P.L. 105-
21 119 (Nov. 26, 1997), to recover attorneys’ fees or other litigation expenses in connection with the
22 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
23 (including without limitation any charges to be dismissed pursuant to this Plea Agreement and any
24 charges previously dismissed).

25 **VIII. ENTIRE PLEA AGREEMENT**

26 Other than this Plea Agreement, no agreement, understanding, promise, or condition between the
27 government and the defendant exists, nor will such agreement, understanding, promise, or condition
28 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and

1 counsel for the United States.

2 **IX. APPROVALS AND SIGNATURES**

3 **A. Defense Counsel.**

4 I have read this Plea Agreement and have discussed it fully with my client. The Plea Agreement
5 accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to
6 plead guilty as set forth in this Plea Agreement.

7 Dated:

8 _____
9 DOUGLAS BEEVERS
10 Attorney for Defendant

11 **B. Defendant:**

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

18 Dated:

19 _____
20 GREGORY J. CHMIELEWSKI
21 Defendant

22 **C. Attorney for United States:**

23 I accept and agree to this Plea Agreement on behalf of the government.

24 Dated:

25 _____
26 BENJAMIN B. WAGNER
27 United States Attorney

28 _____
HEIKO P. COPPOLA
Assistant United States Attorney

1 EXHIBIT "A"

2 Factual Basis for Plea(s)

3 If this matter proceeded to trial, the United States would establish the following facts beyond a
4 reasonable doubt:

5 In early 2003, California-approved workers compensation insurance rates had risen to levels
6 much higher than in prior years. As a result, certain entrepreneurs negotiated agreements with various
7 California Indian tribes to collaborate in business ventures that included the sale of alternative workers
8 compensation products not subject to California regulations because they were sold by ventures
9 operating under the sovereign-nation status of those Indian tribes. The California Department of Labor
10 took the position that such ventures, which existed solely to operate in California while avoiding
11 otherwise applicable state regulations, were illegal.
12

13 In or about February 2003, the defendant, Gregory J. Chmielewski ("Defendant"), founded a
14 professional employer organization ("PEO") called Management Resources Group California, LLC
15 ("MRG"), which Defendant operated from Healdsburg, California. In or about 2006, Defendant moved
16 MRG to Roseville, in the state and Eastern District of California. At that time, MRG operated under the
17 name "Independent Management Resources."
18

19 In summer 2003, Defendant negotiated an agreement with the Fort Independence Community of
20 Paiute Indians Tribe (the "Tribe"), located in Independence, California, pursuant to which the Tribe
21 agreed to establish a Tribe-owned PEO to be operated by MRG that would offer an alternative to
22 California-licensed workers compensation coverage to California businesses at discounted rates. In or
23 about September 2006, with Defendant's guidance, the Tribe established Independent Staffing Solutions
24 ("ISS"), a PEO that offered an alternative workers compensation product it called "Occupational Injury
25 Indemnity Medical Benefits Coverage" ("OIIMBG"). ISS's OIIMBG product was governed by an
26 ordinance that Defendant provided to the Tribe in draft form and that the Tribe subsequently enacted.
27 The Tribe also agreed to Defendant's proposal that ISS enter into a management agreement with MRG,
28

1 which authorized MRG to conduct and manage all aspects of ISS's business activities.

2 Based primarily from the low rates ISS could offer for its OIIMBG product, Defendant and his
3 agents were successful in obtaining clients for ISS's services. In 2004, ISS's biggest year, ISS received
4 deposits of over \$91 million, representing payroll for its clients' employees and OIIMBG policy
5 premium payments. In total, from 2004 through 2007, over \$225 million passed through ISS's accounts.
6 While these numbers do not represent income or earnings by ISS, they provide perspective on the
7 volume of business in which ISS was engaged at the time. During the same period, Defendant's
8 company, MRG, received management fees in the range of \$2.5 million to \$9.3 million.

9
10 As part of the management agreement between MRG and ISS, Defendant promised to establish
11 and maintain a financial reserve fund to assure that valid workers compensation claims from employees
12 of companies who had purchased OIIMBG policies sold by ISS could be paid. However, between 2004
13 and 2007 Defendant engaged in a scheme to defraud ISS customers by plundering that reserve fund for
14 use in his personal real estate side investments. During that period, Defendant caused over \$7.3 million
15 to be paid out from MRG's accounts to other unrelated companies he controlled.

16
17 Despite having caused the transfer of substantial amounts of MRG's reserve fund for his
18 personal use, Defendant continued to oversee ISS's marketing of its OIIMBG product and ISS's
19 acceptance of insurance premiums from existing OIIMBG policy holders each month, knowing that ISS
20 did not have access to liquid reserves sufficient to pay all probable claims. All the while, Defendant
21 knew that companies that purchased OIIMBG policies from ISS did so in reliance on ISS's ability to pay
22 lost wages immediately in the event of an injury. Defendant also knew that his embezzlement of MRG's
23 cash reserves would leave ISS significantly impaired and unable to repay such claims.

24
25 By mid-2006 ISS began experiencing cash flow problems that weakened its ability to meet its
26 contractual obligations to certain of its customers and OIIMBG policy holders. By the end of 2006 and
27 beginning of 2007, traditional California state workers compensation rates stabilized and OIIMBC
28

1 policies became less attractive. At the same time, ISS's revenues began a steep decline. Without
2 sufficient reserves to pay ongoing claims, and lacking additional revenue from new insurance premiums,
3 ISS began to default on its various financial obligations, including OIIMBC claims, state and federal
4 taxes, and its own employee salaries. By September 2007, ISS ceased operations, leaving approximately
5 117 injured workers and approximately \$1.8 million in unpaid claims, which constitute the losses
6 resulting from Defendant's fraud scheme.

7
8 Between February 2006 and May 2006, in furtherance of his scheme to defraud ISS customers,
9 Defendant caused a third-party administrator, Company A, to issue by mail to individuals and
10 institutions at least ten checks in partial or full payment of claims arising out of OIIMBC policies.
11 Specifically, on or about March 20, 2006, Defendant caused Company A to deliver by mail a check in
12 the amount of \$2,640, constituting an OIIMBC benefit payment, from its offices in Texas to C.A. in
13 Stockton, in the state and Eastern District of California. Additionally, on or about March 28, 2006,
14 Defendant caused Company A to deliver by mail a check in the amount of \$12,269, constituting an
15 OIIMBC benefit payment, from its offices in Texas to D.L. in Redding, in the state and Eastern District
16 of California. At the time, Defendant knew that such payments advanced his scheme to defraud ISS
17 customers because he knew that delivering payment on claims against ISS OIIMBC policies when due
18 would create the false impression among ISS customers that ISS was a fully funded insurance company,
19 when, in fact because of Defendant's criminal conduct, it was not.

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

26 Dated:

27 _____
28 GREGORY J. CHMIELEWSKI
Defendant