

AF Approval 

Chief Approval 

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPADIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:13-CR-463-T-33TBM

JOHNATHAN BERGREN

**PLEA AGREEMENT**

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by A. Lee Bentley, III, United States Attorney for the Middle District of Florida, and the defendant, Johnathan Bergren, and the attorney for the defendant, Rick Terrana, Esq., mutually agree as follows:

**A. Particularized Terms**

1. Count Pleading To

The defendant shall enter a plea of guilty to Count One of the Superseding Indictment. Count One charges the defendant with Conspiracy to Commit Bank Fraud, in violation of 18 U.S.C. § 1349.

2. Maximum Penalties

Count One carries a maximum sentence of 30 years imprisonment; a fine of \$1,000,000, or twice the gross gain caused by the offense, or twice the gross loss caused by the offense, whichever is greater; a term of supervised release of not more than 5 years; and a special assessment of \$100. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense(s), and with respect to other offenses, the

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Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offenses with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

First: Two or more persons, in some way or manner, agreed to try to accomplish a common and unlawful plan to commit bank fraud, as charged in the indictment; and,

Second: The defendant knew the unlawful purpose of the plan and willfully joined in it.

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts Two through Nine of the Superseding Indictment, and all counts of the original Indictment, will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement related to the conduct giving rise to this plea agreement.

6. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. § 3663A(a) and (b), defendant agrees to make full restitution to the affected financial institutions of at least \$309,581.75. Approximately \$288,682.45 of this restitution will be joint and several with his co-defendant, Christian Morales.

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG § 3E1.1(a). The defendant understands that this recommendation or request is

not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG § 3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.4., the United States agrees to file a motion pursuant to USSG '3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot, and will not, challenge that determination, whether by appeal, collateral attack, or otherwise.

9. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 982(a)(2), whether in the possession or control of the United States, the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, the following: \$4,200 in U.S. currency, which constitutes proceeds of the offense charged in Count One, and a money judgment of at least \$309,581.75, representing the amount of proceeds obtained as result of the offense charged in Count One.

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The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil judicial or administrative forfeiture action. The defendant also hereby agrees to waive all constitutional, statutory and procedural challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1)(A), the United States and the defendant request that at the time of accepting this plea agreement, promptly after accepting this Plea Agreement, the Court make a determination that the government has established the requisite nexus between the property subject to forfeiture and the offense to which defendant is pleading guilty, and that the government has established the amount of the proceeds of the offense to which defendant is pleading guilty is \$309,581.75 and enter an order of forfeiture. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the

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forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees that the United States shall, at its option, be entitled to the forfeiture of any property (substitute assets) of the defendant up to the value of the money judgment. The Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

The defendant agrees to take all steps necessary to identify and locate all property subject to forfeiture, including substitute assets, and to transfer custody of such property to the United States before the defendant's sentencing. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees that Federal Rule of Criminal Procedure 11 and U.S.S.G. § 1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of his cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to the forfeitable assets before the defendant's sentencing. In addition to providing full and complete information about forfeitable assets, these steps include, but are not limited to, the surrender of

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title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the defendant may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

**B. Standard Terms and Conditions**

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offenses, pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offenses, pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for

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collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. The special assessment is due on the date of sentencing.

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense to which the defendant is pleading provides for imposition of a term of supervised release upon release from imprisonment, and that if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any



recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

4. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in

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order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

5. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

6. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the

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right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

7. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

8. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

9. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for

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perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

10. Factual Basis

Defendant is pleading guilty because defendant is, in fact, guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

FACTS

From at least in or around September 2012, through and including August 23, 2013, Johnathan Bergren and Christian Morales engaged in a conspiracy together, and with others known and unknown, to commit bank fraud by engaging in a check kiting scheme. Bergren, Morales, and others recruited by Bergren, engaged in the scheme to defraud by opening up numerous business checking accounts at federally insured financial institutions and withdrawing funds by depositing checks drawn on other fraudulently opened accounts. Once the co-conspirators established the business checking accounts, they deposited checks drawn on accounts opened at other institutions into the newly established accounts. The conspirators then withdrew funds prior to the checks clearing the banks. The deposited checks were ultimately returned as Non-Sufficient Funds

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(NSF), Closed Account, or Refer to Maker. Despite this, Bergren and Morales had already transferred or withdrawn the funds immediately made available to accounts under their control. These deposits and withdrawals were done at various federally insured financial institutions in the Middle District of Florida.

For example, on or about October 5, 2012, Johnathan Bergren entered the SunTrust Bank at 601 W. Platt Street, Tampa, Florida, and opened up a business checking account in the name of Blue Point Media, account number ending in -1585. Johnathan Bergren produced his Florida issued driver's license to open the account and made a \$100 cash deposit. Bergren also produced incorporation documents for Blue Point Media that listed him as the registered agent and showed the company was formed three days before on October 2, 2012.

Immediately after opening this account at SunTrust, Johnathan Bergren traveled to another SunTrust branch located at 3863 South Dale Mabry Highway, Tampa, Florida. Bergren appeared on video depositing check #100 drawn upon TD Bank account number -0094, opened in the name of Online Tampa, Inc., in the amount of \$750 made payable to Blue Point Media, Inc. Bergren signed his own name on the endorsement line on the back of the check. He also deposited check #100 in the amount of \$650 drawn upon TD Bank account number -0086, opened in the name of Online Tampa, Inc., into the ATM at the same time. Bergren similarly endorsed this check with his own name.

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The next day, on or about October, 6, 2012, Bergren withdrew \$1,500 from an account ending in -1585 at the SunTrust branch at 3863 South Dale Mabry Highway, Tampa, Florida. Bergren appeared on video at the teller window and provided a signed withdrawal slip bearing his name. According to bank records, Bergren presented his driver's license while making the withdrawal. Both TD Bank checks deposited into this account were returned on or about October 11, 2012, as NSF. Both SunTrust and TD Bank are federally insured financial institutions.

On or about October 8, 2012, Christian Morales went to the SunTrust Bank located at 3601 Martin Luther King Boulevard in Tampa, and made a deposit into the same account ending in -1585 opened by Bergren. Morales, who appeared on the ATM surveillance video, deposited check number 98 in the amount of \$2,450, drawn upon Chase Bank account number ending in -8310, from an account opened in the name of ORCCA Marketing, Inc. The address printed on the check Morales deposited from ORCCA Marketing Inc., bears his home address as the address of ORCCA. Sunbiz.org records for ORCCA Marketing, Inc. list Morales as the registered agent and show the company was registered on or about September 25, 2012.

On or about October 10, 2012, Bergren went to the SunTrust branch located at 2002 S. MacDill Avenue, Tampa, Florida, and withdrew \$2,450 from the account ending in -1585. Bergren produced a withdrawal slip bearing his signature and his driver's license at the time he made the withdrawal. The

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check drawn on the Chase Bank account was returned on October 12, 2012, stamped as "Refer to Maker." Chase Bank is a federally insured financial institution.

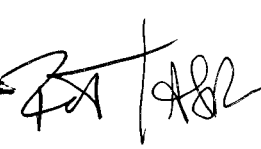
On or about October 10, 2012, Johnathan Bergren went to the SunTrust Bank located at 3863 South Dale Mabry Highway in Tampa and made another deposit into the same account ending in -1585. Bergren, who went to the drive-up teller and appeared on video, deposited check number 119 in the amount of \$2,675 drawn on TD Bank account number -0094, opened in the name of Online Media, Inc. The address for Online Media, Inc. shown on the check was Bergren's home address. The Sunbiz.org records for Online Media, Inc. list Bergren as the registered agent and show that the company was registered on or about September 20, 2012. The day after Bergren made the deposit, on October 11, 2012, Bergren made a withdrawal of \$600 from the account ending in -1585 at the SunTrust branch located at 2002 S. MacDill Avenue, Tampa, Florida. Bergren produced his driver's license as ID at the time he made the withdrawal. On or about October 11, 2012, the TD Bank check number 119 was returned labeled "NSF."

Of the \$6,525 worth of checks deposited into the Blue Point Media, Inc. business checking account at SunTrust, all of which were returned, Bergren and Morales were able to withdraw \$4,450 in cash.

Bergren and Morales used SunTrust, TD Bank, Chase Bank and Bank of America, among others, in their scheme, opening more than 30 business



checking accounts. As of this date, Bergren, Morales, and others acting at their direction, deposited checks into accounts at financial institutions totaling approximately \$493,017.65, of which \$288,682.45 was withdrawn.

Following his arrest for the instant scheme on or about August 23, 2013, through and including the date of his re-arrest on a second complaint for the same type of activity on or about December 19, 2013, Bergren continued engaging in this check kiting scheme. During this second phase of the conspiracy, in which Morales was not involved, Bergren recruited others to open shell companies and corresponding business accounts at Bank of America into which Bergren deposited \$32,167.19 worth of NSF or closed account checks. Bergren directed that third parties withdraw funds from these accounts before the NSF or closed account checks deposited into them cleared, and provide him with the cash. This resulted in an additional actual loss to Bank of America of \$20,899.30. ~~Thus, to date, Bergren is responsible for an intended loss of approximately \$525,184.84 and an actual loss of approximately \$309,581.75.~~ 

11. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

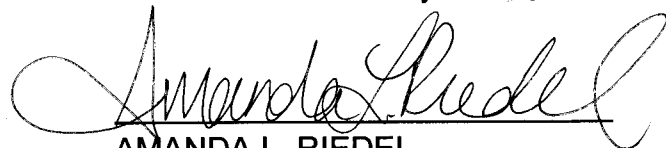
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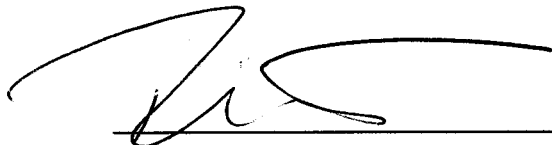
12. Certification

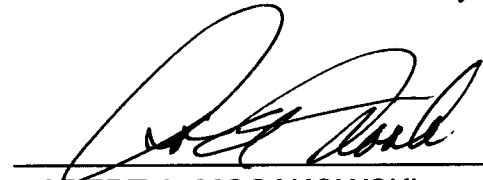
The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 18<sup>th</sup> day of February, 2014.

  
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JOHNATHAN BERGREN  
Defendant

A. LEE BENTLEY, III  
United States Attorney  
  
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AMANDA L. RIEDEL  
Assistant United States Attorney

  
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RICK TERRANA  
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