

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA)
)
v.)
)
JAMES H. BRENNAN, III)

No. 1:17 CR 00053
JUDGES TRM/SKL

AMENDED PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, JAMES H. BRENNAN, III and the defendant's attorney, Myrlene R. Marsa, have agreed upon the following:

1. The defendant will waive indictment and arraignment and plead guilty to an information charging the defendant with the following offense(s):

a) Count 1. Conspiracy to Commit Wire Fraud and Mail Fraud, in violation of 18 U.S.C. § 371.

The punishment for this offense is as follows. A maximum possible term of imprisonment of up to 5 years¹, a maximum possible fine of \$250,000, up to 3 years of supervised release, a special assessment, forfeiture, and restitution.

b) Count 2. Tax evasion, in violation of 26 U.S.C. § 7201.

The punishment for this offense is as follows. A maximum possible term of imprisonment of up to 5 years, a maximum possible fine of \$100,000, up to 3 years of supervised release, a special assessment, forfeiture, and restitution.

¹ The defendant is aware that he faces a maximum possible term of up to 10 years' imprisonment because the Court may order a portion of or all of the entire sentence in each case to run consecutively to the other.

2. The defendant has read the information, discussed the charges and possible defenses with defense counsel, and understands the crime(s) charged. Specifically, the elements of the offense(s) are as follows:

A. Conspiracy to Commit Wire and Mail Fraud.

- i. Two or more persons agreed to commit the crime of wire and mail fraud against the United States;
- ii. The defendant was a party to or member of that agreement;
- iii. The defendant joined the agreement knowing of its objective to commit a crime and intending to join together with at least one other conspirator to achieve that objective;
- iv. That at some time during the existence of the agreement or conspiracy, at least one of its members performed an overt act in order to further the objective of the agreement.

B. Tax Evasion

- i. A substantial income tax was due and owing from the defendant in addition to that declared in his income tax return;
- ii. The defendant made an affirmative attempt, in any manner, to evade or defeat an income tax;
- iii. The defendant willfully attempted to evade and defeat the tax.

3. In support of the defendant's guilty plea, the defendant agrees and stipulates to the following facts, which satisfy the offense elements. These are the facts submitted for purposes of the defendant's guilty plea. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

A. The Wire and Mail Fraud Conspiracy

Starting in and around 2008 and continuing until 2016, the defendant and co-defendant Dyer, owned and managed (50% each) a limited liability corporation that had, among other business purposes, a claimed goal of creating and incorporating eight Tennessee corporations collectively called Scenic City F-10, I-VIII. The defendant and his co-defendant induced investors to invest in Scenic City F-10, I-VIII by insuring the investors that once the otherwise empty Scenic City F-10, I-VIII companies were appropriately capitalized, they would register the common stock of Scenic City F-10, I-VIII with the Securities and Exchange Commission (“Commission”) by filing a Form 10, they would publicly trade Scenic City F-10, I-VIII, and they would use Scenic City F-10, I-VIII to acquire small private businesses, which is a process known as a reverse merger. This arrangement is a common practice and is not illegal. However, the defendant and his co-defendant did not inject the funds they received into Scenic City F-10, I-VIII, but instead, after moving the funds through the Broad Street Venture, LLC’s bank accounts, the defendant and his co-defendant diverted a significant portion of the money to their personal accounts which they then spent on personal items. The defendant and the co-defendant received the fraudulently obtained funds from investors through the use of electronic wires, including ACH transfers, from investors located outside of the state of Tennessee to the Broad Street Ventures, LLC’s bank account located inside the Eastern District of Tennessee. The defendant and the co-defendant also issued stock certificates to the investors, which represented their ownership in the company. The stock certificates were delivered to the victims via United States Postal Service. However, at no time during the eight year offering period did the defendants file a Form 10 with the Commission and no reverse mergers were completed. The formation of Scenic City F-10, I-VIII, along with the concerted action between the

defendant and his co-defendant amount to and demonstrate the existence of an agreement to conduct the fraudulent wire transfers and mailings, and the defendant admits that he knowingly joined the agreement with the intent to commit fraud and with the intent to use both interstate wires and mailings through the United States Postal Service. The defendant admits, for the purpose of sentencing, that all investments solicited and received to fund the Scenic City F-10, I-VIII investments were part of the same scheme.

The defendant also agrees that he and the co-defendant committed numerous acts, including soliciting, receiving, and diverting investment funds, within the Eastern District of Tennessee and that these overt acts furthered the purpose and goal of the conspiracy. Specifically, on February 21, 2013, an investor wired funds from the state of Georgia to a Broad Street Ventures, LLC account in the Eastern District of Tennessee to invest in Scenic City F-10, I-VIII; however, none of those funds were used for Scenic City F-10, I-VIII. Instead, the defendant and his co-defendant diverted investor funds from the Broad Street Ventures, LLC account to their own personal accounts and used these funds for personal expenses and to issue “buybacks” to other Broad Street Ventures, LLC investors who wanted out of the investment. The solicitations of these funds as well as the diversion of the funds were overt acts that furthered the objective of the conspiracy.

The defendant also admits that, in or about July 2013, in the Eastern District of Tennessee, co-defendant Dyer solicited an investor to make a \$25,000 investment in Scenic City F-10, I-VIII. Thereafter, the same investor mailed, via the United States Postal Service, a \$12,500 check on or about July 3, 2013, and a second \$12,500 check on or about July 31, 2013. Instead of applying these funds to Scenic City F-10, I-VIII, the defendant and the co-defendant diverted these funds for personal use.

The parties agree that the total loss amount (not including losses associated with the tax evasion) is greater than \$3,500,000. However, the defendant maintains he is entitled to an offset to the losses based on the specific distribution of shares. On this final point, whether the defendant is entitled to an offset, the parties disagree, and a resolution of this issue will require a sentencing hearing.

B. Tax Evasion

The defendant reported the embezzled investor funds received through Broad Street Ventures, LLC as Long Term Capital Gains, substantially reducing his personal tax liability each tax year by capping his tax rate at 15% for the reported Long Term Capital Gains. Instead, the embezzled funds should have been reported as regular income at a significantly higher tax rate. The defendant also received “payments” from Broad Street Ventures, LLC. These payments were wholly funded by investor funds received during each respective tax year. These payments were treated as nontaxable distributions to the defendant for each tax year involved in the investigative period. The defendant was not entitled to nontaxable distributions from Broad Street Ventures, LLC and the aforementioned payments should have been reported as additional guaranteed payments generated through the partnership as the funds were received and subsequently used for personal use. The defendant also alleged the investor funds were “carried interest” to his CPA; however, neither the defendant nor his co-defendant made substantial investments or applied investor funds toward the creation and registration of the Scenic City F-10, I-VIII. In short, the received investor funds were the primary source of income generated by the defendant through the investment fraud scheme, and under no circumstances did they qualify as “carried interest”. Additionally, Broad Street Ventures, LLC never received returns on investments that included substantial investor capital because they were never made. The defendant and his co-defendant evaded the assessment

of their true tax due and owing on their respective Forms 1040 for tax years 2010 through 2014 by falsely categorizing the embezzled investor funds from their business as Long Term Capital Gains taxed at a 15% tax rate, and consequently, drastically reduced their personal tax liabilities. The defendant reviewed and signed his prepared Forms 1040 for tax years 2010 through 2014. At the defendant's direction and for each year, Forms 1040 were subsequently filed with the Internal Revenue Service from the Eastern District of Tennessee. Through the filing of his tax returns, which is an affirmative step towards evading tax liability, the defendant knowingly evaded the assessment of his true tax liabilities by intentionally mischaracterizing their embezzled investor funds through Broad Street Ventures, LLC as Long Term Capital Gains. The defendant and the government agree that all funds fraudulently obtained pursuant to Count 1 of the Information that were mischaracterized as Long Term Capital Gains are relevant conduct and, the total loss amount for purposes of relevant conduct, will be determined at a sentencing hearing. The table below sets forth the amounts of Additional Guaranteed Payments that were not reported on the defendant's original Forms 1040 for tax years 2010 through 2014, in addition to the Additional Tax Due and Owing for each respective tax year.

Tax Year	Additional Guaranteed Payments	Additional Tax Due and Owing
2010	\$246,399	\$19,303
2011	\$241,785	\$26,785
2012	\$260,751	\$24,882
2013	\$257,109	\$64,914
2014	\$242,093	\$28,658
Subtotal		\$164,542

4. The defendant is pleading guilty because the defendant is in fact guilty. The defendant understands that, by pleading guilty, the defendant is giving up several rights, including:

- a) the right to be indicted by a grand jury for these crimes;
- b) the right to plead not guilty;
- c) the right to a speedy and public trial by jury;
- d) the right to assistance of counsel at trial;
- e) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the defendant guilty beyond a reasonable doubt;
- f) the right to confront and cross-examine witnesses against the defendant;
- g) the right to testify on one's own behalf, to present evidence in opposition to the charges, and to compel the attendance of witnesses; and
- h) the right not to testify and to have that choice not used against the defendant.

5. The parties agree that the appropriate disposition of this case would be the following as to each count:

- a) The Court may impose any lawful term(s) of imprisonment, any lawful fine(s), and any lawful term(s) of supervised release up to the statutory maximum(s);
- b) The Court will impose special assessment fees as required by law; and
- c) The Court may order forfeiture as applicable and restitution as appropriate.

No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding any potential sentence in this case are not binding on the Court, and may not be used as a basis to rescind this plea agreement or withdraw the defendant's guilty plea(s). The defendant understands that the sentence in this case will be determined by the

Court after it receives the presentence investigation report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination will be based upon the entire scope of the defendant's criminal conduct, the defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

6. The parties agree that the restitution owed to the IRS is \$184,022.84,² pursuant to 18 U.S.C. § 3663(a)(3). The amount of restitution made payable to the IRS consists of the following:

Tax Year	Amount Credited to Tax	Interest Under Title 26 Due Through 01/19/2017
2010	\$19,303	\$3,935.74
2011	\$26,785	\$4,362.79
2012	\$24,882	\$3,199.33
2013	\$64,914	\$6,181.55
2014	\$28,658	\$1,801.43

7. The parties agree, that if the defendant is ordered to pay restitution to the IRS and is unable to make full payment on or before the date of sentencing, the defendant shall make payments as ordered by the Court in any restitution order pursuant to this plea agreement.

8. If the Court orders the defendant to pay restitution to the IRS for the failure to pay tax, either directly as part of the sentence or as a condition of supervised release, the IRS will use the restitution order as the basis for a civil assessment. See 26 U.S.C. § 6201(a)(4). The defendant does not have the right to challenge the amount of this assessment. See 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor the defendant's timely payment of

² This interest figure has been calculated by the IRS, under 26 U.S.C. §§ 6601 and/or 6621, through 01/19/2017. This interest figure does not include any interest that may accrue prior to sentencing and pursuant to 18 U.S.C. §3612.

restitution according to that schedule will preclude the IRS from administrative collection of the restitution-based assessment, including levy and distraint under 26 U.S.C. § 6331.

9. The defendant agrees that he will sign any IRS forms deemed necessary by the IRS to enable the IRS to make an immediate assessment of that portion of the tax and interest that he agrees to pay as restitution as set forth in the aforementioned paragraphs. The defendant also agrees to sign IRS Form 8821, "Tax Information Authorization".

10. The defendant agrees not to file any claim for refund of taxes or interest represented by any amount of restitution paid pursuant to this agreement.

11. The defendant agrees that he is liable for the fraud penalty under 26 U.S.C. §§ 6663 or 6651(f) on the amount to be credited to tax set forth in paragraph 6 above. The defendant agrees to the immediate assessment of the fraud penalty on the amount credited to tax set forth in paragraph 6 above and agrees that, in order to enable the IRS to make an immediate assessment of the fraud penalty, the IRS form he agreed to sign in paragraph 9 will include the appropriate amount of the fraud penalty. The defendant agrees not to challenge or dispute any fraud penalties on the amount to be credited to tax set forth in paragraph 6 above.

12. The parties understand that the defendant will receive proper credit, consistent with paragraph 6 above, for the payments made pursuant to this agreement. Except as set forth in the previous sentence, nothing in this agreement shall limit the IRS in its lawful examination, determination, assessment, or collection of any taxes, penalties, or interest due from the defendant for the time periods covered by this agreement or any other time period.

13. The defendant agrees that this agreement, or any judgment, order, release, or satisfaction issued in connection with this agreement, will not satisfy, settle, or compromise the defendant's obligation to pay the balance of any remaining civil liabilities, including tax, additional

tax, additions to tax, interest, and penalties, owed to the IRS for the time periods covered by this agreement or any other time period.

14. The defendant understands that he is not entitled to credit with the IRS for any payment sent to an incorrect address or accompanied by incomplete or inaccurate information, unless and until any payment is actually received by the IRS and identified it as pertaining to his particular liability.

15. The defendant agrees to cooperate with the IRS in its civil examination, determination, assessment, and collection of income taxes related to his 2010 through 2015 income tax returns, and further agrees not to conceal, transfer, or dissipate funds or property that could be used to satisfy such taxes, penalties, and interest. The defendant agrees to provide the IRS any documentation in his possession and/or control requested by the IRS in connection with its civil examination, determination, assessment, and collection of such income taxes prior to sentencing. The defendant further knowingly and voluntarily agrees to waive any statute of limitations with respect to assessment and collection of his individual tax liabilities concerning any of the tax years in question.

16. Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, and the defendant is awarded the two-level reduction pursuant to Section 3E1.1(a), the United States agrees to move, at or before the time of sentencing, the Court to decrease the offense level by one additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. Should the defendant engage in any conduct or make any statements that are inconsistent with accepting responsibility for the defendant's offense(s), including violations of conditions of release or the commission of any

additional offense(s) prior to sentencing, the United States will be free to decline to make such motion, to withdraw that motion if already made, and to recommend to the Court that the defendant not receive any reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

17. The defendant agrees to pay the special assessment in this case prior to sentencing.

18. The defendant agrees that the Court shall order restitution, pursuant to any applicable provision of law, for any loss caused to: (1) the victim(s) of any offense charged in this case (including dismissed counts); and (2) the victim(s) of any criminal activity that was part of the same course of conduct or common scheme or plan as the defendant's charged offense(s).

19. Financial Obligations. The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amount(s) shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off of federal payments, execution on non-exempt property, and any other means the United States deems appropriate. The defendant and counsel also agree that the defendant may be contacted post-judgment regarding the collection of any financial obligation imposed by the Court without notifying the defendant's counsel and outside the presence of the defendant's counsel. In order to facilitate the collection of financial obligations to be imposed with this prosecution, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or

other third party. In furtherance of this agreement, the defendant additionally agrees to the following specific terms and conditions:

a) If so requested by the United States, the defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The defendant promises that such financial statement and disclosures will be complete, accurate, and truthful.

b) The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

c) If so requested by the United States, the defendant will promptly execute authorizations on forms provided by the U.S. Attorney's Office to permit the U.S. Attorney's Office to obtain financial and tax records of the defendant.

20. This plea agreement becomes effective once it is signed by the parties and is not contingent on the defendant's entry of a guilty plea. If the United States violates the terms of this plea agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this plea agreement in any way (including but not limited to failing to enter guilty plea(s) as agreed herein, moving to withdraw guilty plea(s) after entry, or by violating any court order or any local, state or federal law pending the resolution of this case), then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the defendant for any and all federal crimes that the defendant committed related to this case, including any charges that were dismissed and any other charges which the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or speedy trial

or double jeopardy defense to such a prosecution. The defendant also understands that a violation of this plea agreement by the defendant does not entitle the defendant to withdraw the defendant's guilty plea(s) in this case.

21. The United States will file a supplement in this case, as required in every case by the Local Rules of the United States District Court for the Eastern District of Tennessee, even though there may or may not be any additional terms. If additional terms are included in the supplement, they are hereby fully incorporated herein.

22. This plea agreement and supplement constitute the full and complete agreement and understanding between the parties concerning the defendant's guilty plea to the above-referenced charge(s), and there are no other agreements, promises, undertakings, or understandings between the defendant and the United States. The parties understand and agree that the terms of this plea agreement can be modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

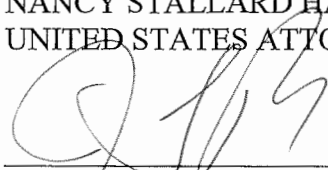
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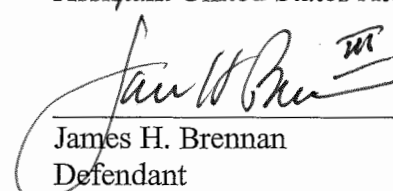
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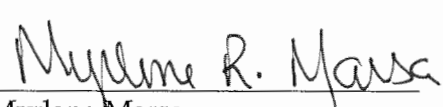
May 3, 2017
Date

NANCY STALLARD HARR
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By:


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James H. Brennan
Defendant


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