

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Case No. 20-CR-177-ECT/HB

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>PLEA AGREEMENT AND</b>
	)	<b>SENTENCING STIPULATIONS</b>
	)	
KYLE WILLIAM BRENIZER,	)	
a/k/a "Kyle Williams,"	)	
	)	
Defendant.	)	

The United States of America and defendant Kyle William Brenizer, a/k/a Kyle Williams ("defendant"), and his attorneys, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, agree to resolve this case on the terms and conditions that follow. This Plea Agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This Plea Agreement does not bind any other United States Attorney's Office or any other federal or state agency. The parties to this Agreement have agreed upon the following:

**Charges in this Case**

1. By this Agreement, defendant agrees to plead guilty to the following charges of the Second Superseding Indictment: Count 2, which charges defendant with wire fraud, in violation of 18 U.S.C. § 1343; Count 3, which charges defendant with money laundering, in violation of 18 U.S.C. § 1957; and Count 6, which charges defendant with aggravated identity theft, in violation of 18 U.S.C. § 1028A.

2. Defendant has read the charges against him contained in the Second Superseding Indictment, and those charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

**Factual Basis**

4. Defendant is pleading guilty because he is in fact guilty of Counts Two, Three, and Six of the Second Superseding Indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to the United States Sentencing Guidelines:

Beginning in or around April 2020, and continuing until at least in or around June 2020, in St. Paul, Minnesota, within the District of Minnesota, and elsewhere, defendant knowingly devised and executed a scheme to defraud a lender and the United States Small Business Administration (“SBA”) by submitting fraudulent applications to obtain money through the Paycheck Protection Program.

***Defendant and His Related Entities***

True-Cut Construction LLC (“True-Cut”) was a Minnesota corporation formed in or around December 2015. True-Cut operated as a contracting and construction company with its principal business location in Brooklyn Park, Minnesota. Defendant was True-Cut’s registered agent, manager, and majority owner. In or about August 2018, True-Cut and defendant were subject to an enforcement action

by the Minnesota Department of Labor and Industry and were ordered to cease and desist from acting or holding themselves out as a residential building contractor, remodeler, or roofer. Since in or about December 2019, True-Cut's contractor license issued by the Minnesota Department of Labor and Industry expired and has not been renewed by True-Cut or defendant. Since at least 2016 through at least 2019, defendant did not report to the State of Minnesota the payment of any wages to a single True-Cut employee. Since at least 2018, defendant did not submit any Form 944 federal tax returns to the United States Internal Revenue Service for True-Cut Construction.

Innovators Inc. was a Minnesota corporation formed in or around January 1997, which was administratively dissolved in or around April 2005. Innovators Inc. remained dissolved from in or around April 2005 until on or about April 23, 2020, on which date the entity was reinstated by defendant who, under the alias "Kyle Williams," listed himself as the chief executive officer. Thereafter, defendant claimed that Innovators Inc. did business as "Interactive Innovators."

***U.S. Small Business Administration, CARES Act  
and Paycheck Protection Program***

The SBA was an executive-branch agency of the United States government that provided support to entrepreneurs and small businesses. The mission of the SBA was to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses and by assisting in the economic recovery of communities after disasters. As part of this effort, the SBA enabled and

provided for loans through banks, credit unions, and other lenders. These loans have government-backed guarantees.

The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was a federal law enacted in March 2020 and designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program (“PPP”).

To obtain a PPP loan, a qualifying business was required to submit a PPP loan application, which was signed by an authorized representative of the business. The PPP loan application required the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application (SBA Form 2483), the small business (through its authorized representative) was required to certify, among other things: (a) that the small business was in operation on February 15, 2020; (b) average monthly payroll expenses; and (c) number of employees. These figures were used to calculate the amount of money the small business is eligible to receive under the PPP. In addition, businesses applying for a PPP loan were required to provide documentation showing their payroll expenses. Applicants must meet (and certify) certain requirements, including that the small business was in operation on February 15, 2020, had employees, and had average monthly payroll costs.

The PPP loan application further required the business (through its authorized representative) to certify whether the applicant or any individual owning 20 percent or more of the equity of the business was subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought.

A PPP loan application was processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were guaranteed by the SBA. Data from the application, including the information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA in the course of processing the loan. PPP loan proceeds were required to be used on certain permissible expenses, including payroll costs, mortgage interest, rent, and utilities. Under the applicable PPP rules and guidance, the interest and principal on the PPP loan is eligible for forgiveness if the business spent the loan proceeds on these expense items within a designated period of time and used a certain portion of the loan towards payroll expenses.

#### *Financial Institutions and Related Entities*

Bank 1 was a federally insured financial institution based in Salt Lake City, Utah. Bank 1 participated in the SBA's PPP as a lender, and, as such, was authorized to lend funds to eligible borrowers under the terms of the PPP.

Bank 2 was a federally insured financial institution based in Fargo, North Dakota, with multiple branch locations, including in Moorhead, Minnesota.

Defendant maintained personal accounts at Bank 2 for which he was the sole account signatory.

Company 1 was a publicly traded company that specialized in processing credit card payments and small-business lending. Company 1 was based in Redwood City, California. Company 1 participated in the SBA's PPP by, among, other things, acting as a service provider between small businesses and certain banks, including Bank 1. Small businesses seeking PPP loans could apply through Company 1 for PPP loans. Company 1 would review the loan applications. If a loan application received by Company 1 was approved for funding, a partner bank, such as Bank 1, disbursed the loan funds to the applicant.

Company 2 was a FINRA-registered broker-dealer that managed self-directed cash accounts for its customers and related expense management services through its website and mobile applications. Company 2 was based in San Francisco, California. Defendant, under the alias "Kyle Williams," maintained an account at Company 2 in the name of Innovators Inc., which purportedly did business as Interactive Innovators. Beginning on or about April 30, 2020, and continuing thereafter, in order to open an account with Company 2, defendant submitted an application and other documents to Company 2 which contained materially false and misleading information. Namely, defendant provided records to Company 2 that falsely claimed that a person identified as Individual B was on the board of directors of Innovators Inc., which purportedly did business as Interactive Innovators. Defendant also provided Company 2 with records purporting to show that a person

identified as Individual C was an incorporator of defendant's Innovators Inc., which supposedly did business as Interactive Innovators. However, in fact, neither Individual B nor Individual C were part of defendant Brenizer's business—Innovators Inc., purportedly doing business as Interactive Innovators—and neither individual gave defendant permission to use their names in connection with any of his businesses.

### *Defendant's PPP Fraud Scheme*

Defendant devised a scheme to defraud Bank 1, Company 1, and the SBA by filing false and fraudulent applications for PPP funds. The purpose of the scheme was for defendant to unjustly enrich himself by obtaining PPP loan proceeds under false and misleading pretenses, including by making false statements about the number of True-Cut employees, payroll expenses, the intended use of the loan proceeds, and defendant's criminal history.

In furtherance of the scheme, on or about May 1, 2020, defendant submitted a false and misleading PPP application to Bank 1 and Company 1 in the name of True-Cut seeking approximately \$841,000 in PPP funds ("PPP Application 1"). PPP Application 1 was signed by defendant. In addition, defendant certified that PPP Application 1 and the information provided in all supporting documents and forms was true and accurate. On PPP Application 1, defendant falsely stated that True-Cut's average monthly payroll was \$338,720 and that the company had approximately 28 employees. In addition, defendant submitted with the PPP Application 1 what purported to be an Employer's Annual Federal Tax Return ("IRS

Form 944”) for True-Cut for 2019. On the purported IRS Form 944, defendant falsely claimed that True-Cut had paid \$4,064,520 in wages, tips, and compensation.

Defendant also falsified bank account records in support of PPP Application 1 unbeknownst to Bank 1 and Company 1 at the time. More specifically, defendant provided Bank 1 and Company 1 with monthly statements for a personal account that he maintained at Bank 2, which defendant had altered and falsified to appear as “True-Cut Construction” bank account statements. In fact, and as defendant knew at the time, True-Cut maintained no accounts at Bank 2. On or about May 5, 2020, Company 1 notified defendant that it did not approve the issuance of a PPP loan based on PPP Application 1.

As an additional part of his scheme to defraud—and, as alleged in Count 2 of the Second Superseding Indictment—on or about May 12, 2020, defendant caused the submission of another false and misleading PPP application to Bank 1 and Company 1 in the name of True-Cut seeking approximately \$841,000 in PPP funds (“PPP Application 2”). In order to conceal his involvement, defendant omitted his name from PPP Application 2, which he caused to be signed and submitted under the name of Individual A, whom defendant falsely claimed was the 90% owner of True-Cut. In fact, and as defendant knew, Individual A had no ownership interest in True-Cut.

Under the false pretense that Individual A was a 90% owner of True-Cut, defendant caused PPP Application 2 to be certified as containing true and accurate information and supporting documentation, when, in fact, PPP Application 2 contained materially false and misleading claims. Among other things, PPP



Application 2 falsely stated that True-Cut's average monthly payroll was \$336,400 and that the company had approximately 30 employees. Defendant caused PPP Application 2 to be submitted to Bank 1 and Company 1 with fraudulent supporting information, namely, bogus bank account records and a purported IRS Form 944 for True-Cut for 2019 with false information about True-Cut's payroll expenses.

As further alleged in Count 2 of the Second Superseding Indictment, defendant's electronic submission of PPP Application 2 from Minnesota was routed interstate through Company 1's servers located outside of Minnesota. As a result of defendant's material falsehoods and omissions, Bank 1 eventually approved PPP Application 2. On or about May 13, 2020, Bank 1 distributed approximately \$841,000 to defendant through a wire transfer sent to defendant's personal account at Bank 2.

After defendant received approximately \$841,000 in fraud proceeds, he distributed and misappropriated, or attempted to distribute and misappropriate, those fraud proceeds for the personal benefit of himself and other parties in violation of the PPP's requirements. More specifically, rather than use PPP funds for permissible business expenses, such as payroll costs, mortgage interest, rent, or utilities, defendant instead transferred approximately \$650,000 to an account at Company 2 that he controlled and was unrelated to True-Cut; made an approximately \$29,000 payment to purchase a Harley-Davidson motorcycle; transferred approximately \$20,000 to a personal savings account in defendant's name; transferred approximately \$10,000 to Individual A; and paid for various retail and entertainment expenditures for his personal benefit.

Using portions of the \$841,000 in fraudulently obtained PPP proceeds, defendant also engaged, and attempted to engage, in monetary transactions involving financial institutions affecting interstate commerce in criminally-derived property of a value greater than \$10,000. For example, as alleged in Count 3 of the Second Superseding Indictment, on or about May 16, 2020, defendant knowingly engaged in a monetary transaction involving a financial institution affecting interstate commerce through his submission of a check of approximately \$29,985 from defendant's personal account at Bank 2 for the purchase of a Harley-Davidson motorcycle. Those funds were derived from a specified unlawful activity, namely, defendant's scheme to commit wire fraud.

In the course of engaging in his wire fraud scheme, defendant knowingly transferred, possessed, and used, without lawful authority, a means of identification of other people. For example, as alleged in Count 6 of the Second Superseding Indictment, on or about April 30, 2020, did unlawfully use a means of identification, specifically, the name of Individual C, during and in relation to the commission of wire fraud. More specifically, in order to create a financial account at Company 2 in which defendant subsequently deposited \$650,000 in fraud proceeds, defendant first provided Company 2 with records purporting to show that a person identified as Individual C was an incorporator of defendant's Innovators Inc., which supposedly did business as Interactive Innovators. However, in fact, Individual C was not part of defendant's business and never gave defendant permission to use Individual C's name in connection with any of his businesses.

**Maximum and Minimum Statutory Penalties**

5. Defendant understands that Count 2 of the Second Superseding Indictment carries the following maximum statutory penalties:

- a. 20 years in prison;
- b. supervised release term of 3 years;
- c. fine of \$250,000, or twice the gross gain or loss from the offense, whichever is greater;
- d. mandatory special assessment of \$100; and
- e. payment of mandatory restitution in an amount to be determined by the Court.

Defendant further understands that Count 3 of the Second Superseding Indictment carries the following maximum statutory penalties:

- a. 10 years in prison;
- b. supervised release term of 3 years;
- c. fine up to 250,000; and
- d. mandatory special assessment of \$100.

Defendant further understands that Count 6 of the Second Superseding Indictment carries the following minimum and maximum statutory penalties:

- a. the Court is required to impose a sentence of 24 months in prison consecutive to any other sentence imposed for Counts 2 and 3;
- b. maximum supervised release term of 1 year;
- c. maximum fine up to 250,000; and
- d. maximum mandatory special assessment of \$100.

**Guidelines Calculations**

6. The parties acknowledge that defendant will be sentenced in accordance with 18 U.S.C. § 3551, *et seq.* Nothing in this Plea Agreement should be construed to limit the parties from presenting any and all relevant evidence to the Court at sentencing. The parties also acknowledge that the Court will consider the United

States Sentencing Guidelines in determining the appropriate sentence and stipulate to the following guidelines calculations:

- a. Base Offense Level (Count 2). The parties agree that the base offense level for wire fraud is 7. (U.S.S.G. § 2B1.1(a)(1)).
- b. Specific Offense Characteristics (Count 2). The government believes that the offense level should be increased by 14 levels because the intended loss (\$841,000) is more than \$550,000, but not more than \$1,500,000. (U.S.S.G. § 2B1.1(b)(1)(H)). Defendant reserves the right to argue that the offense level should be increased by 4 levels because the actual loss is more than \$15,000, but not more than \$40,000. (U.S.S.G. § 2B1.1(b)(1)(C)). The parties agree that no other specific offense characteristics apply.
- c. Base Offense Level (Count 3). Based upon the offense level for Count 2 set forth above in subparagraphs a. and b., the government believes that the base offense level for money laundering is 21. (U.S.S.G. § 2S1.1(a)(1)). Based upon the offense level for Count 2 set forth above in subparagraphs a. and b., defendant reserves the right to argue that the base offense level for money laundering is 11. (U.S.S.G. § 2S1.1(a)(1)).
- d. Specific Offense Characteristics (Count 3). The parties agree that the base offense level for Count 3 should be increased by 1 level because defendant was convicted under 18 U.S.C. § 1957. (U.S.S.G. § 2S1.1(b)(2)(A)). The parties agree that no other specific offense characteristics apply.
- e. Grouping. The parties agree that the counts are grouped based on the analysis found at U.S.S.G. § 3D1.2. Therefore, the offense level is the highest offense level of the counts in the Group. Accordingly, the government believes that the combined offense level is 22, whereas, the defendant believes that the combined offense level is 12.
- f. Acceptance of Responsibility. The government agrees to recommend that the defendant receive a 2-level reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a). As defendant has timely notified the government of his intention to enter a plea of guilty, the government agrees to recommend that the defendant receive an additional 1-level reduction pursuant to U.S.S.G. § 3E1.1(b) provided the determined offense level is 16 or

greater. Whether these reductions will be imposed shall be determined by the Court in its discretion. However, defendant understands and agrees that the government's recommendations are conditioned upon the following: (1) defendant testifies truthfully during the change of plea and sentencing hearings; (2) defendant cooperates fully with the United States Probation Office in the pre-sentence investigation; and (3) defendant engages in no conduct inconsistent with acceptance of responsibility before the time of sentencing. The parties agree that no other Chapter 3 adjustments apply.

- g. Criminal History Category. The parties believe that, at the time of sentencing, defendant will fall into Criminal History Category IV. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing. Defendant understands that if the presentence investigation reveals any prior adult or juvenile sentence which should be included within his criminal history under the U.S. Sentencing Guidelines, defendant will be sentenced based on his true criminal history category, and he will not be permitted to withdraw from this Plea Agreement. U.S.S.G. § 4A1.1.
- h. Anticipated Guidelines Range. If the adjusted offense level is 19, and the criminal history category is IV, the Sentencing Guidelines range is **46 to 57 months of imprisonment plus 24 months consecutive** for the aggravated identity theft count, in addition to any supervised release, fine, and restitution the Court may impose. If the adjusted offense level is 10, and the criminal history category is IV, the Sentencing Guidelines range is **15 to 21 months of imprisonment plus 24 months consecutive** for the aggravated identity theft count, in addition to any supervised release, fine, and restitution the Court may impose.
- i. Fine Range. If the adjusted offense level is 19, the fine range is \$10,000 to \$100,000. (U.S.S.G. § 5E1.2(c)(3)). If the adjusted offense level is 10, the fine range is \$4,000 to \$40,000. (U.S.S.G. § 5E1.2(c)(3)).

- j. Sentencing Recommendation, Departures, and Variances. The parties reserve the right to make a motion for departures and/or variances from the applicable Guidelines range and to oppose any such motion(s) made by the opposing party. The parties also reserve the right to argue for a sentence outside the applicable guideline range.

7. **Discretion of the Court.** The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable Guidelines factors and the applicable criminal history category. The Court may also depart from the applicable Guidelines range. If the Court determines that the applicable guideline calculations or the defendant's criminal history category are different from that stated above, the parties may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

8. **Special Assessment.** The Guidelines require payment of a special assessment in the amount of \$100.00 for each of the three felony counts to which the defendant is convicted. U.S.S.G. § 5E1.3. Defendant agrees the \$300.00 special assessment is due and payable at the time of sentencing.

9. **Restitution and Disclosure of Assets.** Defendant understands and agrees that the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A, applies and that the Court is required to order the defendant to make restitution to the victims of his crime. The parties agree that the amount of restitution is at least \$23,491.37.

10. Defendant will fully and completely disclose to the United States Attorney's Office the existence and location of any assets in which the defendant has

any right, title, or interest, or over which the defendant exercises control directly or indirectly, including those assets held by a spouse, nominee or other third party, or any business controlled by the defendant. Defendant agrees to assist the United States in identifying, locating, returning, and transferring assets for use in payment of restitution and fines ordered by the Court. More specifically, two weeks after the change of plea, defendant agrees to provide to the United States, under penalty of perjury, a financial disclosure form listing all defendant's assets and financial interests valued at more than \$1,000 before the date of sentencing. Defendant agrees to provide updates with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), which occur prior to sentencing, within seven days of the event giving rise to the changed circumstances. Defendant further agrees to execute any releases that may be necessary for the United States to obtain information concerning the defendant's assets and expressly authorizes the United States to obtain a credit report on the defendant to evaluate his ability to satisfy financial obligations imposed by the Court. If requested by the United States, defendant agrees to submit to one or more asset interviews or depositions under oath.

11. **Revocation of Supervised Release.** Defendant understands that if he were to violate any condition of supervised release, defendant could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583(k).

**Waiver of Rights**

12. **Waiver of Pretrial Motions.** Defendant understands and agrees that he has certain rights to file pre-trial motions in this case. As part of this Plea Agreement, and based upon the concessions of the United States within this Plea Agreement, defendant knowingly, willingly, and voluntarily gives up the right to file pre-trial motions in this case and agrees to withdraw and not pursue any motions previously filed.

13. **Waiver of Trial Right.** Defendant understands that he has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial. Defendant understands that by pleading guilty he surrenders this right.

14. **Waivers of Appeal and Collateral Attack.** Defendant understands that 18 U.S.C. § 3742 affords defendant the right to appeal the sentence imposed in this case. Acknowledging this right, and in exchange for the concessions made by the United States in this Plea Agreement, defendant hereby waives all rights conferred by 18 U.S.C. § 3742 to appeal defendant's sentence, including the amount of restitution, unless the Court imposes a sentence of imprisonment exceeding 81 months (57 months for the wire fraud and money laundering offenses plus 24 months for the aggravated identity theft offense). The United States also waives its right to seek appellate review of any sentence of imprisonment imposed by the District Court on any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment is 39 months or more (15 months for the wire fraud and money laundering offenses



plus 24 months for the aggravated identity theft offense). In addition, defendant expressly waives the right to petition under 28 U.S.C. § 2255. However, 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. Defendant has discussed these rights with the defendant's attorney. Defendant understands the rights being waived, and defendant waives these rights knowingly, intelligently, and voluntarily.

15. **Forfeiture.** Defendant agrees to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) in conjunction with 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the wire fraud scheme charged in the Second Superseding Indictment. The government reserves its right to seek the direct forfeiture of specific assets, a money judgment forfeiture against defendant, and the forfeiture of substitute property pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c).

#### Conclusion

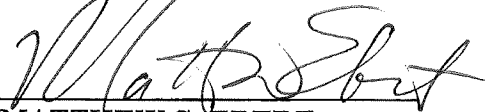
16. This is the entire agreement and understanding between the United States and defendant.

17. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement, to cause defendant to plead guilty.

18. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts every term and condition of this Plea Agreement.

Date: 1/31/2022

CHARLES J. KOVATS, JR.  
Acting United States Attorney



BY: MATTHEW S. EBERT  
ALLISON K. ETHEN  
Assistant United States Attorneys

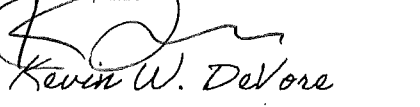
Date: 11-19-2021



KYLE WILLIAM BRENIZER  
Defendant

01-31-2022

Date: 11/20/2021



KEVIN W. DeVORE  
Attorney for Defendant

1/31/2022