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September 10, 2021

Robert B. Hamilton, Esq.  
Assistant Federal Public Defender  
Federal Public Defender District of Oregon  
101 S.W. Main St., Ste 1700  
Portland, Or 97204

Re: *United States v. David Roger Unitan*  
Case No. 3:21-cr-00053-BR

Dear Counsel:

- Parties/Scope**: This plea agreement is between this United States Attorney's Office (USAO) and defendant, and thus does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority. This agreement does not apply to any charges other than those specifically mentioned herein.
- Charges**: The defendant agrees to waive full discovery and substantive motions and to plead guilty to the Indictment filed in this matter, which charges him in Count 1 with Wire Fraud in violation of Title 18, United States Code, Section 1343, in Count 2 with Aggravated Identity Theft in violation of Title 18, United States Code, Section 1028A, and in Count 3 with Transaction Money Laundering in violation of Title 18, United States Code, Section 1957.
- Penalties**: The maximum penalties for Count 1, Wire Fraud, is 20 years in prison, a fine of \$250,000 (or, if greater, twice defendant's gross gain or victims' gross losses), and 3 years of supervised release. Count 2, Aggravated Identity Theft, requires the imposition of a 2-year prison sentence, consecutive to any other sentence. The maximum penalties for Count 3, Transaction Money Laundering, are 10 years in prison, a fine of \$250,000, and 3 years of supervised release. In addition, defendant must pay a \$100 fee assessment for each felony count of conviction. Defendant agrees to pay the total fee assessment of \$300 by the time of entry of guilty plea or explain to the satisfaction of the Court why this cannot be done.
- Dismissal/No Prosecution**: The USAO agrees to forgo any additional charges against defendant resulting from this investigation, if, first, all of the essential facts underlying such charges are known to the USAO at the time of this agreement and, second, defendant is convicted and sentenced in conformity with this agreement.

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5. **Sentencing Factors**: The parties agree that the Court must first determine the applicable advisory guideline range, then determine a reasonable sentence considering that range and the factors listed in 18 U.S.C. § 3553(a). Where the parties agree that sentencing factors apply, such agreement constitutes sufficient proof to satisfy the applicable evidentiary standard.

6. **Elements of the Offenses**: For defendant to be found guilty of Wire Fraud as alleged in Count 1 of the Indictment, the government must prove the following elements beyond a reasonable doubt:

- A. First, the defendant knowingly devised a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;
- B. Second, the statements made or facts omitted as part of the scheme were material, that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property;
- C. Third, the defendant acted with the intent to defraud, that is, the intent to deceive and cheat; and
- D. Fourth, the defendant used, or caused to be used, an interstate wire communication to carry out or attempt to carry out an essential part of the scheme.

For defendant to be found guilty of Aggravated Identity Theft as alleged in Count 2 of the Indictment, the government must prove the following elements beyond a reasonable doubt:

- E. First, the defendant knowingly used without legal authority a means of identification of another person;
- F. Second, the defendant knew that the means of identification belonged to a real person; and
- G. Third, the defendant did so during and in relation to the Wire Fraud charged in Count 1 of the Indictment.

For defendant to be found guilty of Transactional Money Laundering as alleged in Count 3 of the Indictment, the government must prove the following elements beyond a reasonable doubt:

- H. First, the defendant knowingly engaged or attempted to engage in a monetary transaction, that is, the deposit, withdrawal, or transfer, in or affecting interstate commerce, of funds or a monetary instrument by, through, or to a financial institution;

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- I. Second, the defendant knew the transaction involved criminally derived property;
- J. Third, the property had a value greater than \$10,000;
- K. Fourth, the property was, in fact, derived from the Wire Fraud scheme alleged in Count 1 of the Indictment; and
- L. Fifth, the transaction occurred in the United States.

The defendant stipulates that uncontested and admissible evidence of his relevant conduct as summarized in paragraph 7, *infra*, establishes each of the foregoing elements as to each count of the Indictment beyond any reasonable doubt.

7. **Factual Basis and Relevant Conduct:** Defendant stipulates that the following is a true and accurate summary of his offense conduct. He further agrees and avers that every statement herein and every allegation in the Indictment is true and correct and that the government could prove every statement beyond a reasonable doubt at trial, including through evidence of these admissions.

- a) In late 2019, defendant was an unemployed videographer and business consultant and the divorced father of two minor children. He was tens of thousands of dollars in arrears on his child support obligations. Before embarking on the fraud scheme charged in the Indictment, he lived with his mother in Walnut Creek, California. By the end of 2019, defendant had started dabbling in on-line fraud schemes to make money.
- b) When Congress passed the CARES Act in March 2020, defendant recognized an opportunity to procure, quickly and with limited scrutiny, COVID-relief loans guaranteed or issued by the United States Small Business Administration (“SBA”) by submitting fraudulent applications with stolen or fictitious identities—most often a variation of the name “Daniel Cohen” paired with another person’s Social Security number.
- c) To facilitate this scheme, defendant, as “Daniel Cohen,” caused the reinstatement of straw entity by the name of Albright LLC with the Oregon Secretary of State’s Office on or about March 23, 2020, and fraudulently incorporated a new straw entity, also called Albright LLC, with the California Secretary of State’s Office on or about June 10, 2020. Defendant also opened numerous bank accounts for these entities using stolen and assumed identities.
- d) Beginning in April 2020 and continuing at least through August 2020, defendant applied for dozens of Economic Injury Disaster Loans (“EIDLs”) by submitting false and fraudulent applications to the SBA by means of wire transmissions from locations in Oregon to the computer servers hosting SBA’s EIDL application portal in Colorado. Defendant also applied for numerous Paycheck Protection

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Program loans by submitting, through interstate wires, false and fraudulent applications from locations in Oregon to lenders throughout the United States.

- e) As a result of the dozens of false and fraudulent loan applications he submitted, defendant induced the SBA and participating PPP lenders to fund the following loans in the following amounts:

FUNDING DATE	LENDER	AMOUNT	BORROWER COMPANY NAME	RESPONSIBLE INDIVIDUAL NAME
5/18/2020	Cross River Bank (PPP)	\$113,621.55	Albright LLC	Daniel Cohen
5/19/2020	Cache Valley Bank (PPP)	\$87,255	Albright LLC dba Albright Delivery	Dan Cohen
5/30/2020	SBA (EIDL)	\$33,500	Albright LLC	Daniel Cohen
6/18/2020	SBA (EIDL)	\$150,000	Corporate Victim #1	ID-Theft Victim #1
7/2/2020	SBA (EIDL)	\$155,000	Corporate Victim #2	ID-Theft Victim #1
7/9/2020	SBA (EIDL)	\$145,000	Albright Electric dba Albright	ID-Theft Victim #2
7/31/2020	SBA (EIDL)	\$150,000	Albright LLC dba Albright Delivery	Daniel Cohen
8/30/2020	SBA (EIDL)	\$145,000	Corporate Victim #3	ID-Theft Victim #3

- f) All told, defendant caused actual fraud losses of **\$979,376.55** from the foregoing loans and misused the identity of at least four actual individuals, whom defendant knew to be actual individuals, in applying for these loans and others.
- g) One of the identity-theft victims, whose name and Social Security number defendant used to obtain the above-listed EIDLs paid on June 18, 2020, and July 2, 2020, is the individual identified as "AV-1" in Count 2 of the Indictment. Another identity-theft victim, whose name and Social Security number defendant used in an unsuccessful attempt to obtain yet another EIDL, is a criminal defense lawyer on the CJA panel in this district and a friend of defendant's ex-wife.
- h) Defendant used the proceeds of his successful loan applications to purchase numerous assets, including:
1. A dark blue Ford pickup, purchased on or about June 24, 2020, for \$77,898.11, as alleged in Counts 1 and 3 of the Indictment;
  2. A white 2020 Tesla Model X, purchased for \$91,163.46 by three wire transfers on August 4 and 28 and September 16, 2020;
  3. A rigid-hulled inflatable boat and trailer, purchased for approximately \$18,583; and
  4. A total of at least 3.4207687 bitcoins (worth approximately \$156,000) and 3 1-oz. American Buffalo gold proof coins (worth approximately \$7,800).

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All these assets, except for the boat and trailer, were seized and administratively forfeited by the Internal Revenue Service pursuant to warrants or defendant's voluntary abandonment.

- i) Defendant was arrested pursuant to a warrant issued on a complaint on December 22, 2020, at a house he was leasing under a stolen identity in Lake Oswego, Oregon. During his arrest, federal agents discovered and subsequently seized a high-end Apple computer system (which defendant had acquired with wire fraud proceeds) and numerous mobile telephones, digital media, and counterfeit means of identification, including ATM cards.
- j) Following his arrest, defendant was released on pretrial supervision and was extensively interviewed by case agents on January 4, 2021. During that interview, defendant accepted full responsibility for submitting numerous fraudulent loan applications and agreed to forfeit and abandon all assets representing the proceeds of the fraudulently procured loans. He pledged to assist law enforcement in identifying and locating additional fraudulently procured assets and subsequently surrendered the above-referenced gold coins, which he had given to his girlfriend to hold.
- k) Despite his promised cooperation, defendant violated the terms of his pretrial release and absconded from pretrial supervision by January 29, 2020, causing the issuance of a warrant for his arrest on that date. He remained in hiding with his girlfriend and her young child for nearly seven weeks, failing to appear as ordered for his arraignment on February 19, 2021. While in abscond status, defendant towed the above-referenced boat and trailer to an unknown location on the Oregon coast. Deputy U.S. marshals ultimately located and arrested defendant, who was with his girlfriend and her child at a motel in Marysville, Washington—approximately 80 miles from the Canadian border—on March 17, 2021. He has remained in federal custody since that date.

The parties stipulate that the offense level applicable to Count 1 of the Indictment based on the foregoing relevant conduct is 23, pursuant to U.S.S.G. § 2B1.1(a)(1) (base offense level for wire fraud of seven), (b)(1)(H) (fourteen-level enhancement for loss exceeding \$550,000 but less than \$1.5MM), (b)(10) (two-level enhancement for sophisticated means). The parties also stipulate that the offense level applicable to Count 3 is 24, pursuant to U.S.S.G. § 2S1.1(a)(1) (base offense level equal to offense level applicable to offense from which laundered funds were derived), (b)(2)(A) (one-level enhancement for conviction under 18 U.S.C. § 1957). The parties further stipulate that a two-level enhancement for impeding administration of justice, to wit, willfully failing to appear for arraignment, must be imposed pursuant to U.S.S.G. § 3C1.1. Finally, the parties stipulate that Counts 1 and 3 of the Indictment are grouped under U.S.S.G. § 3D1.2(d) and that the combined offense level for purposes of the U.S. Sentencing Guidelines is therefore 26.

8. **Acceptance of Responsibility:** The defendant must demonstrate to the Court that defendant fully admits and accepts responsibility under U.S.S.G. § 3E1.1 for defendant's

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unlawful conduct in this case. If defendant does so, the USAO will recommend a three-level reduction in defendant's offense level. The USAO reserves the right to change this recommendation if defendant, between plea and sentencing, commits any criminal offense, again obstructs or attempts to obstruct justice as explained in U.S.S.G. § 3C1.1, or acts inconsistently with acceptance of responsibility as explained in U.S.S.G. § 3E1.1.

9. **Waiver of Discovery**: As a material term of this offer and agreement, defendant expressly accepts the USAO's offer to make available the evidence gathered in the investigation of this matter for on-site inspection and the USAO's production of limited discovery as of the date of this agreement in full satisfaction of the government's discovery obligations in this case. Defendant knowingly, intelligently, and voluntarily waives his rights to further production of evidence or information from the government, even though he may be entitled to such production pursuant to the Federal Rules of Criminal Procedure, the discovery orders of the Court, and any prior demands for discovery.

10. **Agreement to Undergo Polygraph Examination Prior to Sentencing**: Defendant agrees to undergo examination by a polygraph examiner selected by the USAO to confirm the accuracy of his prior admissions as to the scope of his offense conduct and the nature and whereabouts of the proceeds thereof. Defendant shall be deemed to have successfully satisfied this obligation if (a) the examiner does not conclude that it is more likely than not that defendant has prevaricated in his responses during the examination, and (b) defendant's responses are consistent with his representations during his January 4, 2021, interview with the USAO and subsequent disclosures through counsel. Defendant stipulates that the USAO shall have sole and unreviewable discretion to determine, in consultation with the polygraph examiner, whether this obligation has been satisfied.

11. **Recommendation of Not More Than 61 Months' Imprisonment**: In consideration of defendant's waiver of substantive motions, rights of appeal and collateral attack, and full discovery, his prompt acceptance of responsibility as described in paragraph 8, *supra*, his successful completion of a polygraph examination before sentencing as provided in paragraph 10, *supra*, his stipulation to a total sentence of at least 44 months' imprisonment pursuant to paragraph 12, *infra*, and his compliance with all other terms of this agreement, the USAO will recommend a downward variance of two levels and a sentence of not more than 37 months' imprisonment on Counts 1 and 3, with each sentence running concurrently with the other, followed by the mandatory consecutive sentence of 24 months' imprisonment on Count 2. The USAO shall recommend defendants' period of incarceration be followed by three years' supervised release.

12. **Stipulated Sentencing Range of 44-61 months**: The parties stipulate pursuant to Rule 11(c)(1)(C) that the combined sentence in this matter shall not be less than 44 months' imprisonment nor more than 61 months' imprisonment, except that the USAO may recommend and the Court may impose any lawful sentence of at least 44 months' imprisonment if defendant violates any material term of this agreement (other than paragraph 10, *supra*) following his guilty

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pleas. Defendant agrees that his failure to successfully discharge the obligation to undergo a polygraph examination as provided in paragraph 10, *supra*, shall permit the government, at the USAO's sole discretion, to reduce its downward variance recommendation by one level.

**Defendant acknowledges and agrees that the upper end of the stipulated sentencing range for purposes of Rule 11(c)(1)(C) in that event shall be 65 months' imprisonment and the lower end of the stipulated sentencing range shall remain 44 months.**

13. **Waiver of Appeal/Post-Conviction Relief:** Defendant knowingly and voluntarily waives the right to appeal from any aspect of the conviction and sentence on any grounds, except for a claim that: (1) the sentence imposed exceeds the statutory maximum, (2) the Court arrives at an advisory sentencing guideline range by applying an upward departure under the provisions of Guidelines Chapters 4 or 5K, or (3) the Court exercises its discretion under 18 U.S.C. § 3553(a) to impose a sentence exceeding the advisory guideline sentencing range as determined by the Court at the time of sentencing without required notice to the parties. Should defendant seek an appeal despite this waiver, the USAO may take any position on any issue on appeal and may pursue any charges forgone pursuant to this agreement. Defendant also waives the right to file any collateral attack, including a motion under 28 U.S.C. § 2255, challenging any aspect of the conviction or sentence on any grounds, except on grounds of ineffective assistance of counsel, and except as provided in Fed. R. Crim. P. 33 and 18 U.S.C. § 3582(c)(2).

Defendant expressly agrees that these waivers shall remain effective if the USAO alters its sentencing recommendation consistent with paragraphs 8, 11, and 12, *supra*, or because defendant otherwise breaches this agreement.

14. **Court Bound to Impose Stipulated Sentence:** The parties have entered this agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C). The Court must either accept the agreement and impose a sentence within the range to which the parties stipulated in paragraph 12, *supra*, or reject the agreement and thereby vitiate its terms, allowing the defendant to withdraw his plea and the government to pursue all lawful charges and to argue for any lawful sentence.

15. **Full Disclosure/Reservation of Rights:** The USAO will fully inform the PSR writer and the Court of the facts and law related to defendant's case. Except as set forth in this agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.

16. **Payment of Full Restitution:** Defendant agrees to an order of full restitution to all victims of the offenses of conviction and his relevant conduct, including all victims of identity theft, pursuant to 18 U.S.C. §§ 3663 and 3663A. Defendant specifically agrees that the Court is required to and shall impose an order of restitution to the SBA in an amount of not less than **\$819,376.55**.

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Defendant agrees that such restitution is due and payable immediately after the judgment is entered and is subject to immediate enforcement, in full, by the United States. If the Court imposes a schedule of payments, defendant agrees that the schedule of payments is a schedule of the minimum payment due, and that the payment schedule does not prohibit or limit the methods by which the United States may immediately enforce the judgment in full.

Defendant agrees fully to disclose all assets in which defendant has any interest or over which defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or third party. Defendant agrees to truthfully complete the Financial Disclosure Statement provided herein by the earlier of fourteen days from defendant's signature on this plea agreement or the date of defendant's entry of a guilty plea, sign it under penalty of perjury, and provide it to both the USAO and the United States Probation Office. Defendant agrees to provide updates with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within seven days of the event giving rise to the changed circumstances.

Defendant expressly authorizes the USAO to obtain a credit report on defendant. Defendant agrees to provide waivers, consents, or releases requested by the USAO to access records to verify the financial information. Defendant also authorizes the USAO to inspect and copy all financial documents and information held by the U.S. Probation Office.

The parties agree that defendant's failure to timely and accurately complete and sign the Financial Disclosure Statement, and any update thereto, may, in addition to any other penalty or remedy, constitute defendant's failure to accept responsibility under U.S.S.G. § 3E1.1.

#### **Transfer of Assets**

Defendant agrees to notify the Financial Litigation Unit of the USAO before defendant transfers any funds or interest in property (other than through recurring debt payments and ordinary business operations) with a value exceeding \$10,000 owned directly or indirectly, individually or jointly, by defendant, including any interest held or owned under any name, including trusts, partnerships, and corporations.

#### **Restitution**

Defendant understands and agrees that the total amount of any monetary judgment that the Court orders defendant to pay will be due and payable immediately. Defendant further understands and agrees that pursuant to 18 U.S.C. § 3614, defendant may be resentenced to any sentence which might have originally been imposed if the Court determines that defendant has knowingly and willfully refused to pay a fine or restitution as ordered or has failed to make sufficient bona fide efforts to pay a fine or restitution. Additionally, defendant understands and agrees that the government may enforce collection of any fine or restitution imposed in this case pursuant to 18 U.S.C. §§ 3572, 3613, and 3664(m), notwithstanding any initial or subsequently modified payment schedule set by the Court. Defendant understands that any monetary debt



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defendant owes related to this matter may be included in the Treasury Offset Program to potentially offset defendant's federal retirement benefits, tax refunds, and other federal benefits.

Pursuant to 18 U.S.C. § 3612(b)(1)(F), defendant understands and agrees that until a fine or restitution order is paid in full, defendant must notify the USAO of any change in the mailing address or residence address within 30 days of the change. Further, pursuant to 18 U.S.C. § 3664(k), defendant shall notify the Court and the USAO immediately of any material change in defendant's economic circumstances that might affect defendant's ability to pay restitution, including, but not limited to, new or changed employment, increases in income, inheritances, monetary gifts, or any other acquisition of assets or money.

#### **Restoration Request**

The USAO agrees to submit a restoration request to the Department of Justice Asset Forfeiture and Money Laundering Section ("MLARS"). Pursuant to that request, the USAO will seek MLARS's approval to apply any funds seized and forfeited by the Department of Justice as part of this investigation and prosecution—except those funds or properties returned to third party claimants or offsetting expenses incurred by the government—to the anticipated restitution order described in this paragraph 16. The plea is not contingent on MLARS's approval of such request.

17. **Breach of Plea Agreement:** If defendant breaches the terms of this agreement (except paragraph 10, *supra*) or commits any new criminal offenses between signing this agreement and sentencing, the USAO is relieved of its obligations under this agreement, but defendant may not withdraw any guilty plea or rescind his waivers of appeal and post-conviction relief, as described in paragraph 13, *supra*.

If defendant believes that the government has breached the plea agreement, defendant must raise any such claim before the district court, either prior to or at sentencing. If defendant fails to raise a breach claim in district court, defendant has waived any such claim and shall be precluded thereby from raising a breach claim for the first time on appeal.

18. **Memorialization of Agreement:** No promises, agreements, or conditions other than those set forth in this agreement will be effective unless memorialized in writing and signed by all parties listed below or confirmed on the record before the Court. If defendant accepts this offer, please sign and attach the original of this letter to the Petition to Enter Plea.

(Continued on next page.)

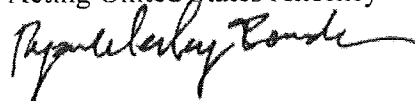
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19. **Deadline:** This plea offer expires if not accepted and signed by defendant and counsel and received by the USAO by 5:00 p.m. on September 16, 2021.

Sincerely,

SCOTT ERIK ASPHAUG  
Acting United States Attorney



RYAN W. BOUNDS  
Assistant United States Attorney

I have carefully reviewed every part of this agreement with my attorney. I understand and voluntarily agree to its terms. I expressly waive my rights to appeal as outlined in this agreement. I wish to plead guilty because, in fact, I am guilty.

10/27/2021  
Date

/s/ David Unitan  
David Roger Unitan, Defendant

I represent the defendant as legal counsel. I have carefully reviewed every part of this agreement with defendant. To my knowledge, defendant's decisions to make this agreement and to plead guilty are informed and voluntary ones.

10/27/2021  
Date

/s/ Robert Hamilton  
Robert B. Hamilton, Esq.  
Attorney for Defendant